













Zilla Court

Decissions

Case- 10 (1851)

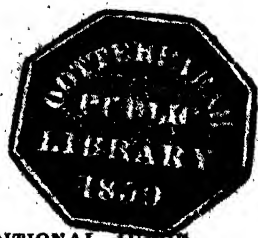
A handwritten signature in dark ink, appearing to be 'Sms.' with a large, stylized initial 'S'.

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## ZILLAH BEHAR.

PRESENT: FRANCIS LOWTH, Esq., ADDITIONAL JUDGE.

THE 20TH JANUARY 1851.

No. 10 of 1849.

*Appeal from a decision of Syed Tufuzzool Hosein Khan, Sudder Ameen of Behar, dated 19th March 1849.*

Baboo Deanut Rai and Baboo Iqkurrun Loll, (Plaintiffs,) Appellants,

*versus*

Sheik Hyder Buksh and Rai Joogul Kishwur, and after his demise Rai Hurnarain, Rai Ramnarain, and Rai Teknarain, his sons, (Defendants,) Respondents.

THIS suit was instituted on the 12th June 1845, to establish a right to a watercourse and embankment, from the river Tattee, appertaining to the village Bulleeharree. Suit valued at rupees 500.

The particulars of this case are duly recorded at pages 156 and 157, of the Decisions of this court for 1848, on the 27th July of which year the suit was remanded for re-investigation, as to whether a watercourse from the river in question to the village named existed or not. The sudder ameen remarks, in his decision above quoted, that he visited the spot and, in the presence of the vakeels of both parties and residents of the villages Bulleeharree and Mohsinabad Korawan, examined and inspected the locality pointed out by the plaintiffs, but found no trace of the watercourse in question as being connected with or leading from the river Tattee; that the watercourse laid down in the survey map had become choked up with sediment and therefore rendered useless, the lands of the plaintiffs' village being supplied with water by means of a small drain cut from a reservoir; and as the plaintiffs' witnesses had failed to prove the existence of a watercourse through the defendants' lands, he dismissed the suit.

In appeal it is urged that, the survey map, the evidence of the defendants' ryots and other witnesses, and decision of the criminal authorities suffice to establish the fact of a watercourse from the river to the appellants' village being in existence. The respondents, in reply, urge no fresh argument, but declare the decision by the lower court to be in all respects correct.

I have carefully examined the survey maps filed in this suit and find them fully to support the claim of the plaintiffs. With these maps before him I am at a loss to understand how the sudder ameen has recorded his opinion in such ~~de~~cl<sup>d</sup> terms as that no watercourse exists from the river Tattee; except that, being unable to read English and comprehend the purport of the different numbers and figures in English, he could not understand the maps themselves or put them together in a correct form; they however distinctly show not only the existence of the watercourse, but that it flows from the river Tattee at the point declared by the plaintiffs; and as no question can be raised as to the correctness of these maps, I consider the decision of the lower court altogether incorrect. I moreover find from this decision that, whilst declaring no watercourse to exist, the sudder ameen allowed that there was a small drain from the river, at the point denoted by the plaintiffs, for the purpose of conducting water into the main watercourse leading to the appellants' villages. Instead, therefore, of rejecting their claims, I conceive he was bound to consider this as the channel laid down in the maps, and thus have afforded them the redress sought for against the defendants' attempt to deprive them of a long established right. I therefore decree this appeal, and reverse the order of the lower court, with all costs chargeable to the respondents.

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THE 20TH JANUARY 1851.

No. 13 of 1849.

*Appeal from a decision of Syed Tufuzzool Hosein Khan, Sudder Ameen of Behar, dated 13th April 1849.*

Musst. Ashoorun *alias* Goolhun, (Defendant,) Appellant, in the case of Hemraj Chowdree, Lochun Singh, Chooramun Singh *alias* Chumun Chowdree, and Mussts. Faheemoonissa, Nujceemoonissa, Zeeboonissa, and Hajee Begum, (Defendants,) Plaintiffs.

*versus*

Appellant and Sheikh Kuramut Ali, (her husband); Khadim Hosein, Mahomed Hosein, (son,) Musst. Rusheedah, (wife,) and Musst. Mukdoomah *alias* Joolhun, (daughter of Sheikh Nyamut Ali, deceased); and Futtehnarain, Umrit Lol, Daleh Sing, Debec Lol, Poonit Lol, and Sewa Rai; and after demise of Sheikh Kuramut Ali, his wife aforesaid and son Mowonut Hosein and Moujee Lol, Defendants.

THIS suit was instituted on the 26th July 1847, for possession of 8 beegahs, 12 biswas, and 10 dhoors of land, called Nowkoorwa, in mouza Parbutteepoor Mey, pergunnah Huvelee Behar, and amend-

ment of a proceeding held by the deputy collector attached to the survey department, under date 21st February 1842.

Suit valued at Sicca rupees 438, or Company's rupees 460, Sicca rupees 300 being the value of the land and 138 rupees the amount of revenue appropriated from 1251 to 1254 F. S.

The plaintiffs state that the lands in question have from time immemorial formed a portion of their estate, and been possessed by them and their ancestors; moreover, after measurement by the revenue authorities the lands were settled with them. At the time of the survey, however, of the estates of both parties, and which was so conducted as to include the lands of all proprietors in one circle, Sheikh Khadim Hosein claimed the lands in question, and caused them to be included as a portion of his estate Muthurapoor. The plaintiffs therefore became dispossessed, and now sue for the recovery of their property, as well as for the rents of the land, of which Sewa Rai was at the time their ryot and cultivator.

Sheikh Kuramut Ali replied that, having made over the whole of his estate Muthurapoor to his wife Ashoorun, who was in possession, he had no concern with the matter.

Sewa Rai declared himself to have cultivated only 6 b. 6 b. 4 d. of the land, and that he had regularly paid his rents to Musst. Ashoorun, whose receipts he held, and, therefore, he should not have been made a party to the suit.

Musst. Ashoorun replied that the lands belonged to her estate and had never been in the possession of the plaintiffs or any of the other shareholders of Parbutteepoor Mey; that on the occasion of that estate being let on a farming settlement, the lands in question were attached, but afterwards released on proof of their forming a portion of her estate being adduced, as shown by an order dated 16th January 1838: further, that she obtained a decree in the court of the moonsiff of Behar, under date 30th December 1843, against Moujee Lol, for non-payment of the rents of these lands, and, in a suit pending between her and Hemraj Chowdree and Chumun Chowdree, for right to remove water from the river Punchanee for the purpose of irrigating these lands, her claim was supported and possession of the property established: she therefore considered the present claim altogether incorrect.

The sudder ameen recorded his opinion to the following effect: that as the measurement papers showed the plaintiffs' village to contain 311 beegahs 5 b. 18 d. and 3 dhoorkies, and the estate had been settled with them for that quantity of land on the 18th December 1839, and the lands in question had been included in that settlement, as shown by the *khusras*, or field book filed, the release of the property from attachment prior to the settlement could not be considered to confer any right to the property on the defendants: further, that as the decrees obtained by them against ryots for non-payment of rents were *ex-parte* affairs, the cultivators having



confessed judgment, and the plaintiffs in this suit in no wise concerned, and therefore evidently collusive, the claims of the plaintiffs were not thereby injured. The sudder ameen moreover considered the decree obtained by the defendants, under date 31st July 1847, and confirmed in appeal on the 14th June 1848, not to affect the rights of the plaintiffs to the land in question, the claim therein adjudicated upon having reference only to a share of a watercourse, and therefore decreed the suit in favor of the plaintiffs.

In appeal, the arguments advanced before the lower court are repeated, and the plaintiffs copy of the *khusrak* or ameen's field book of measurements declared to be wrong and insufficient to support their claim.

As the appellant appears to have urged no objections to the measurement papers at the time of the settlement of this estate, and the lands in question have been assessed and included in that settlement, and no proof whatever has been adduced by her to establish her claim to them, I fully concur in the opinion expressed by the sudder ameen, and accordingly confirm the order passed by the lower court, and dismiss the appeal, with costs, without notice to the respondents.

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THE 20TH JANUARY 1851.

No. 14 of 1849.

*Appeal from the decision of Syed Tufuzzool Hosein Khan, Sudder Ameen of Behar, dated 13th April 1849.*

Musst. Ashoorun *alias* Goohun, (Defendant,) Appellant, in the case of Hemraj Chowdree, Lochun Sing, Chooramun Sing *alias* Chumun Chowdree, and Mussts. Fuheemoonissa, Nujeemoonissa, Zeeboonissa, and Hajee Begum, (Plaintiffs,) Respondents,

*versus*

Appellant and Sheikh Kuramut Ali, (her husband); Khadim Hosein, Mahomed Hosein, (son,) Musst. Kusheedah, (wife,) and Musst. Mukdoomah *alias* Joohun, (daughter of Sheikh Nyamut Ali, deceased); and Mitterjeet Sing, Kunhya Lal Rai, and Moujee Lal; and after demise of Sheikh Kuramut Ali, his wife aforesaid and son Mowonut Hosein, Defendants.

THIS suit, originally instituted on the 23rd August 1847, in the court of the moonsiff of Behar, for possession of 4 beegahs of land, called Chowkoorwa, in mouza Purbutteepoor Mey, pergunnah Huvelee Behar, and according to settlement measurement 3 beegahs, 14 biswas, 15 dhoors, by cancelment of a collusive decree, dated 30th January 1847, and valued at rupees 268, *i. e.*, rupees 149-5-4, the amount of the said decree, rupees 106-10-8, the price of the land, and rupees 12 for wasilaut of 1254 F. S., was transferred to the sudder ameen's court in consequence of the preceding suit being pending in that court between the same parties.

The plaint in this suit is to the same effect as that given in the preceding case No. 13, relative to the plaintiffs' right of property; the defendant, Sheikh Kuramut Ali, having, however, induced his wife Ashoorun to sue the other defendants in the moonsiff's court at Behar, and obtained a collusive decree by the parties confessing judgment, ere the plaintiffs could file a statement of their claims, they now sue to have that decree, dated January 30th 1847, cancelled and possession awarded to them.

Sheikh Kuramut Ali replied to the same purport as stated in the preceding case.

Musst. Ashoorun claimed the lands as appertaining to her estate, declaring the survey *klusrah* to be the only correct document of that description prepared, that the lands in question were therein specified to belong to her; and that the decree obtained by her was not collusive, the plaintiffs having failed to represent their claims, though a period of three months had been allowed them for so doing; moreover, that they had even now omitted to specify the boundaries of the lands, and, therefore, their claim was undeserving of consideration.

Mitterjeet Sing and Sewa Rai replied, in support of the statement of Ashoorun, that they had discharged all demands against them up to 1253 F. S.; and as the proprietors of the estate had entered into arrangements for the cultivation of the lands in question, with another party, for 1254 F. S., they were not liable for rents of that year and had been improperly made parties to the suit.

The other defendants filed no answer.

The sudder ameen, considering the decree obtained by the defendant Musst. Ashoorun collusive, and the plaintiffs' title to the lands fully established, decreed the suit in their favor against Ashoorun alone, with wasilaut for 10 rupees, the amount of rent acknowledged in the suit decided on the 30th January 1847, and exempted all the other defendants from responsibility.

The arguments advanced in appeal in this suit are similar to those pleaded by the same appellant in the preceding case.

As the lands in this suit appear to have been measured, assessed, and settled in the same manner as those noted in the preceding case, and I see no reason to doubt the correctness of the measurement papers of the plaintiffs, I consider the appellant's claim to the property invalid; moreover, as the survey *klusrah* filed by her fails to establish her right, and the defendants Sewa Rai, Mitterjeet Singh, and Kunhya Lal appear to have confessed judgment only on the date of the decision, *i. e.*, 30th January 1847, and the suit was decided by the moonsiff of Behar without due consideration for the rights and interests of the plaintiffs in this case, I fully concur with the sudder ameen in considering that decree a collu-

sive one. I therefore uphold the order of the lower court, and dismiss the appeal, with costs, without notice to the respondents.

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THE 20TH JANUARY 1851.

No. 165 of 1849.

*Appeal from a decision of Moulree Syed Hameedooddeen Ahmad, Moonsiff of Aurungabad, dated 10th August 1849.*

Baboo Kaleepersaud, (Plaintiff,) Appellant,

*versus*

Bhoondar Pandee, (Defendant,) Respondent.

THIS suit was instituted on the 22nd December 1848, to recover rupees 25-2-2, principal and interest of a bond, dated 15th Assar 1250 F. S.

The plaintiff represents the defendant to have borrowed from him the sum of rupees 15-2-6, and to have executed the bond in question, conditioning to repay the amount with interest at the end of Bysakh 1251. The defendant admits having given the document, but pleads that he has repaid the loan in full by the sale of a pair of bullocks, which plaintiff took in lieu of the debt, and that this claim has been brought solely out of spite in consequence of his son having left the plaintiff's service.

The moonsiff dismissed the suit, on the grounds that the debt had been liquidated by the sale of the bullocks of defendant, and as the plaintiff had neglected to prefer his claim at the expiration of the term fixed in the bond, and had failed to account for his allowing so long a time to elapse, it was evident the suit was brought out of malice.

The appellant urges that his claim was fully proved by the evidence of his witnesses, that the bullocks were not sold to him, but in liquidation of a debt due to his brother, and that the moonsiff, if dissatisfied with the testimony of the witnesses examined, should have summoned others, cited by the plaintiff, but he refused to do so.

I fully concur in the opinion expressed by the moonsiff. On perusal of the record it is clear that the plaintiff never thought of bringing this action until a quarrel between the parties deprived him of the services of the defendant's son, and as he himself admits that he has no proof of his ever having demanded payment of the money lent, and the witnesses of the defendant depose in a most clear and circumstantial manner to the sale of the cattle and removal of the same by the plaintiff, I dismiss the appeal with costs, and confirm the order of the lower court, without notice to the respondent.

THE 22ND JANUARY 1851.

No. 12 of 1849.

*Appeal from a decision of Syed Tufuzzool Hossain Khan, Sudder Ameen of Behar, dated 19th April 1849.*

Bhooput Singh, for self and as guardian of Goodur Singh and Bishnath Singh, minors, sons of Jhuggur Singh, deceased; and Dumbur Singh, Duriao Singh, Mohun Singh, for self and as guardian of Chooramun Singh, minor, son of Utam Singh, deceased; and Dhoakul Singh, (Plaintiffs,) Appellants,

*versus*

Mehun Singh, Oodwunt Singh, Bishnath Singh, and Sheo Singh, sons of Duriao Singh, deceased; Lalee Singh and Bolakee Singh, sons of Gujraj Singh, deceased; and Munbodh Singh, Jobraj Singh, Doonear Singh and Boonee Singh, (Defendants,) Respondents.

THIS suit was instituted on the 8th July 1848, to recover rupees 798-13-11-4, due according to a bond, dated 13th Kartikh 1244 F. S.

The plaintiffs state that, on an adjustment of accounts taking place, the sum of Sicca rupees 544 was shown to be due by Duriao Singh, Gujraj Singh, and the other defendants named, and that the bond in question was given in consequence; that the parties stipulated to liquidate the amount in the end of Chyite 1244, or, in failure thereof, to allow the plaintiffs to collect the same from the produce of a twelve annas portion of Gopalpoorah in the following year: as only rupees 169-8 were paid by the original debtors; the plaintiffs now sue their heirs for the balance amounting to Sicca rupees 374-8, which they refuse to liquidate either in cash or in produce.

The defendants, in their answer, deny the bond *in toto*, and urge that, of their property in the village Gopalpoorah, a four annas share had been let in farm to Utam Singh, Jhuggur Singh, and Dhoakul Singh, from 1244 to 1251 F. S., at a jumma of rupees 500, on an advance of rupees 3000; that the farmers agreed to pay them rupees 13-2-8 and credit the remaining 367-8 in liquidation of the loan, and on the debt being discharged the farmers resigned their lease: they therefore objected to pay the amount of the bond, which they declared to be a fabrication.

The plaintiffs replied that this statement of the case was incorrect; that originally Munbodh Singh, one of the defendants, owed rupees 4784-13, as per decree of court, but, being unable to liquidate the amount in full, had paid a portion in cash and given a four annas share of the village in question to them in farm, the sum of rupees 3000 being deducted from the amount of the decree in consideration thereof. As a large balance, however, remained, the defendants jointly gave the bond in question, and therefore the claim was correct.

The defendants rejoined that the bond was never given in liquidation of the decree, but that a deed of *bye-bil-wuffa* had been executed on that account, and cancelled on payment of the debt, as shown by the *razecnameh* filed in the execution of decree case; after this Lalee Singh and Bolakee Singh, sons of Gujraj Singh, and Boonee Singh, confessed judgment.

The sudder ameen accordingly decreed the case against the above named three defendants, and exempted the rest from all liability; they were however declared chargeable with their own expenses.

Against his decision the plaintiffs appeal, urging that, as the bond was proved to have been executed by all the defendants jointly, none of the parties could be exempted from responsibility for the debt.

As the parties confessing judgment in this case admitted, without reserve of any kind, their liability for the debt, I consider the other defendants to have been thereby exonerated from all responsibility on that account, and therefore confirm the order of the lower court, and dismiss the appeal, with costs, without notice to the respondents.

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### THE 22ND JANUARY 1851.

No. 15 of 1849.

*Appeal from a decision of Syed Tufuzzool Hosein Khan, Sudder Ameen of Behar, dated 19th April 1849.*

Mehun Singh, Oodwunt Singh, Bishnath Singh, Sheo Singh, Munbodh Singh, Jobraj Singh, and Doonear Singh, (Defendants,) Appellants, in the case of Bhooput Singh and others, (Plaintiffs,) Respondents,

*versus*

Appellants, and Lalee Singh and Bolakee Singh, sons of Gujraj Singh and Boonee Singh, (Defendants.)

THIS suit was instituted on the 8th July 1848, to recover rupees 798-13-11-4, due according to a bond, dated 13th Kartikh 1244 F. S.; and as all the particulars have been duly recorded in the preceding appeal No. 12, their repetition is needless.

The present appeal is against that portion of the decision passed by the sudder ameen in the preceding suit, declaring the appellants liable to bear their own expenses, from which they urge they should have been exempted, in consequence of their being declared irresponsible for the original debt sued for by the plaintiffs.

As the appellants appear to have been parties to the bond in question jointly with the defendants who confessed judgment, the plaintiffs were doubtless justified in making them parties to the suit. I do not, however, under all the circumstances of the case,

consider their exemption, from liability for the original debt, to form any ground for awarding them similar relief in respect to their expenses, and therefore dismiss their appeal, with costs, and confirm the order of the lower court, without notice to the respondents.

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THE 22ND JANUARY 1851.

No. 155 of 1849.

*Appeal from a decision of Sheikh Kasim Ali, former Additional Moonsiff of Gyah, dated 12th July 1849.*

Shcolal Singh and Bydnath Singh, (Defendants,) Appellants,

*versus*

Sheikh Unwuroollah and Sree Chund, (Plaintiffs,) Respondents.

THIS suit was instituted on the 28th March 1849, to recover rupees 229-13-9, on account of rents due for certain lands cultivated by the defendants in mouza Soondhurree Bebulpore, talook Sunaout, pergunnah Sunaout, for 1256 F. S.

The plaintiffs state that they are farmers of the entire mehals Puroreah and Sunaout, and that the defendants have evaded payment of the rents due for the lands cultivated by them, amounting to the sum above noted as per accounts prepared and signed by the putwarree and gomashtha of the village.

The defendants deny being indebted a single fraction, and declare the account rendered by the plaintiffs to be a fabrication.

The moonsiff, considering the claim fully proved by the evidence of witnesses, and the receipts filed by the defendants to be spurious, decreed the case in favor of the plaintiffs. The appellants urge no fresh arguments, in appeal, of any consequence.

I have examined the receipts filed by the defendants and have no doubt of their being spurious. The evidence of their witnesses also is of a most unsatisfactory and contradictory character and totally unworthy of credit. I therefore consider the order of the moonsiff just and proper, and accordingly uphold it, and dismiss the appeal, with costs, without notice to the respondents.

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THE 22ND JANUARY 1851.

No. 166 of 1849.

*Appeal from a decision of Moulree Syed Humeedooddeen Almud, Moon-siff of Aurungabad, dated 10th August 1849.*

Baboos Hurnath Singh, Telukhdharree Singh, Ujudhea Singh, and Sahib Singh, (Plaintiffs,) Appellants,

*versus*

Chooneeram Nonear, (Defendant,) Respondent.

THIS suit was instituted on the 3rd July 1848, to recover rupees 40-12, principal and interest, on account of a ready money loan.

The plaintiffs state that the defendant, having occasion for some ready money to enable him to discharge some demands against him in Sahelgunge, Gyah, applied to them for a loan of rupees 37-8. As Baboo Sahib Singh, one of the plaintiffs, was at the station, he took the money from the banking house of Bishenchund Sahoo, and paid it to the defendant. On his return home, Sahib Singh demanded the money, but defendant refused to pay, alleging that the sum had been given him as a refund of a portion of an illegal fine that had been imposed upon him, for a quarrel that had occurred between him and one Toree, a ryot of the plaintiffs, and therefore was not liable for its repayment. The plaintiffs deny that any such fine was levied, and therefore sue for the recovery of the amount advanced.

The defendant denies having borrowed any money, and declares the amount to have been paid to him, by the plaintiffs, to induce him to hush up the matter relative to an illegal fine of rupees 50, which they had exacted from him, and respecting which he at the time purposed complaining to the criminal authorities; that the plaintiffs, moreover, promised to refund the balance of 12 rupees 8 annas, but, on their failing to do so, he brought the subject to the notice of the court, when Baboo Ujudhea Singh was fined rupees 100. This order was however reversed on appeal. If the money had been paid, as alleged, he pleaded that the banking book of Bishenchund Sahoo would show, or the plaintiffs would have some receipt to support the demand.

The moonsiff remarked that the record showed the parties to be at enmity with each other, and, therefore, he considered the action to have been brought out of malice; that no bond or receipt appeared to have been executed at the time of the alleged transaction; and as, in another suit between the same parties in a similar matter of a loan, the plaintiffs had taken such a document, it was impossible to believe they would have neglected such a measure in this instance, had the loan been really made: further, that the testimony of witnesses proved the fact of the money in question having been paid as a refund of a portion of the fine illegally levied by the plaintiffs, and therefore he dismissed the case.

In appeal, it is urged that the payment of the money to the defendant is proved by the evidence of Bishenchund Sahoo and others; but the moonsiff bestowed but little consideration on their depositions; that the moonsiff had no power to interfere with the order passed by the sessions judge in a matter only cognizable by the criminal authorities; and having in this suit admitted the validity of the defendant's plea relative to the alleged refund of the money, and rejected it in another case, (No. 176 of 1845, following,) the moonsiff's decision is altogether incorrect.

In support of their claim, the appellants produce a few leaves of an old account book of Bishenchund Sahoo, in which the item in question is mentioned, and some witnesses to swear to the truth of the entry. As the money appears in the books at the debit of Baboos Hurnath Singh and Ujudhea Singh, as having been paid to one *Suhai Singh* for the purpose of being given to the defendant, but without any mention whatever being made of the defendant being the actual recipient of the sum paid, and the appellants themselves admit his not being their ryot or in any way connected with them, whilst the record shows the existence of much ill-feeling between the parties, and therefore that the defendant was not a likely person for the appellants to have made such an advance to, without their demanding a receipt or bond, a precaution they had not failed to adopt in a previous case of a similar nature, I fully concur in the opinion expressed by the moonsiff, that this action has originated in malice. The appellants, moreover, declare the money to have been advanced as a temporary loan to meet pressing demands against the defendant, on the understanding that it should be repaid immediately on his return home. They assert their having required fulfilment of the promise, and yet, on the defendant's refusal to liquidate the amount, allowed no less than nine months to elapse ere they instituted this suit. The entry in the books of Bishenchund, moreover, is, in my opinion, open to strong suspicion; the item being entered as the very last transaction of the day, at the very bottom of the leaf, and evidently added after the accounts of the day had been closed. I therefore place no reliance on the books, and, under such circumstances, can give no credit to the testimony of the appellants' witnesses. It is also urged that, the defendant's admission of having received the sum in question suffices to prove the correctness of the claim. As the statement of the defendant relative to the exaction of an illegal fine was proved to be false before the appellate criminal court, his declaration to the same effect now, and to his having received rupees 37-8 as the refund of a portion of that fine, cannot be considered in any other light than as worthless and insufficient. It appears to me that having so pleaded before the criminal authorities, he has, for the sake of consistency, repeated the same story in this suit; and in



giving credit to this plea, I think the moonsiff was wrong. Under all the circumstances of the case, I consider the claim not established, and therefore dismiss the appeal, and confirm the order of the lower court, without notice to the respondent.

THE 22ND JANUARY 1851.

No. 175 of 1849.

*Appeal from a decision of Moulvee Syed Humeedooddeen Ahmud, Moonsiff of Aurungabad, dated 10th August 1849.*

Choonee Ram Nonear, (Plaintiff,) Appellant,

*versus*

Baboos Ujudhea Singh, Ramsarun Singh, Sahib Singh, and Telukhdharrec Singh, (Defendants,) Respondents.

THIS suit was instituted on the 27th July 1848, to recover rupees 13-12-9, principal and interest, being the balance due of a fine illegally levied, and to set aside an order passed by the sessions judge, dated 2nd March 1848.

The plaintiff states that, in consequence of his having had a misunderstanding with one Toree, a ryot of defendants, they illegally levied a fine of 50 rupees from him, and, on his threatening to complain to the criminal authorities, Sahib Singh induced him to accept rupees 37-8, and hush up the matter, at the same time promising to pay the balance, or rupees 12-8, on his return home. Neither he nor the other defendants however paid; and on his subsequently bringing the matter to the notice of the criminal authorities, Baboo Ujoodhea Singh was fined 50 rupees. This order having been set aside by the sessions judge in appeal, he now sues for the recovery of the money by cancelment of this last order.

The defendants not only deny having levied the fine, but plead that, as the plaintiff's statement was proved to be false, as shown by the order of the sessions judge remitting the fine imposed by the lower criminal court, the claim now preferred cannot be entertained, being opposed to Section 18, Regulation III. 1793.

The moonsiff dismissed the case, remarking that the evidence showed one Deendyal Singh to have been the receiver of the sum claimed, and by omitting to sue him the plaintiff's claim was incorrect; and further, that the court had no power to interfere with an order passed by the criminal authorities in matters of the nature in question, which were cognizable only by the criminal court.

In appeal, it is urged that, as the moonsiff in another suit (No. 166 preceding appeal) gave the appellant credit for a portion of this very fine, which the defendants had endeavoured to recover from him as having been loaned to him, the repayment of the amount now sued for, being the balance of that illegal fine, should have been directed;

that his witnesses proved his claim, and as Deendyal Singh received the money from Baboo Telukhdharree Singh, there was no occasion for his being made a party to the suit.

I altogether disbelieve the story of the levy of the fine by the defendants. The record shows the parties to have been on general bad terms, and in the habit of bringing accusations in the criminal courts against each other, and therefore I consider this action, relative to the fine, to have been brought solely with the view of causing annoyance to the opposite party. The evidence adduced by the plaintiff, in support of his charge, in the criminal court, was any thing but satisfactory, and, in my opinion, rightly rejected by the sessions judge. I therefore dismiss the appeal, with costs, and confirm the order of the lower court, without notice to the respondents.

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THE 23RD JANUARY 1851.

No. 11 of 1849.

*Appeal from a decision of Syed Tufuzzool Hosein Khan, Sudder Ameen of Behar, dated 21th March 1849.*

Madhoram, general agent of Baboo Hurgobind Ghose, (Plaintiff,) Appellant,

*versus*

Oodho Mahto, (Defendant,) Respondent.

THIS suit was instituted on the 30th September 1831, for possession of about 25 beegahs of land in mouza Merkooree, pergunnah Jurrak, valued at 300 Sicca rupees, or three times the annual produce.

The plaintiff states that the village above named is the property of his master, and situated to the north east of mouza Runkhajelalpoor, the property of the defendant, the lands of the two estates being divided by an embankment called *Bunaheeahurree* and a ditch, called Dhobra, extending therefrom to the boundary line of another village named Meksour; that in 1227 F. S., the plaintiff gave his estate in farm to one Ramnarain Singh, who appointed the defendant as his agent in 1231 F. S.; that in the following year the defendant removed the boundary line marks, raised a new embankment, and thus deprived the plaintiff of several beegahs of land as above noted, and, on his complaining in the foudardar court, possession was confirmed to the defendant by the magistrate, under date 10th August 1827. The plaintiff therefore sues for possession, reckoning the quantity of land *about* 25 beegahs.

The defendant declares the plaintiff to have wrongly represented the boundary line of his estate, and that the lands in question do not form a portion of his property. On the 4th February 1833, the sudder ameen decreed the case in favor of the plaintiff, and on

appeal that order was confirmed; but subsequently, on the defendant applying for a review of judgment, the judge directed him to sue for any excess of land that might be given into the plaintiff's possession, on execution of the decree being taken out, by a fresh suit: he accordingly brought an action for 26 beegahs, 12 biswas; but his claim was dismissed by the principal sudder ameen, under date 22nd December 1845. On appeal to the Sudder Court, an order was passed, under date 8th January 1848, that no necessity for the institution of a fresh suit existed, and that, if the plaintiff had taken more lands than he was entitled to, the defendant should have applied to the court for its restoration at the time of the execution of the decree. The defendant accordingly represented his claim, respecting which the sudder ameen now decides to the following effect:—that he had visited the spot at the request of the plaintiff, and inspected the locality in the presence of all parties, and found the plaintiff to have obtained possession of twice as much land as he was entitled to; that on comparing the boundary lines laid down in the decree of the former sudder ameen with those noted in a map of the lands drawn by a mohurrir, deputed by the principal sudder ameen, and which bears the signatures of both parties, the landmarks were found to correspond; and as by a measurement made by the same mohurrir, the plaintiff was proved to have in his possession 24 beegahs, 1 biswas, 4 dhoors, and 6 dhoorkies in excess of the quantity decreed to him originally, namely, 25 beegahs, 8 biswas, and 3 dhoors, and to which only he was justly entitled, the sudder ameen decreed that quantity of land to the plaintiff and declared the defendant entitled to the excess.

Against this decision the plaintiff appeals, and urges, that the application of the defendant was opposed to the Regulations, and, having been thrown out by the Sudder Court, on the dismissal of the appeal against the sudder ameen's decree of the 4th February 1833, it was barred by the limitation laws, and therefore should not have been entertained; that, as his plaint did not specify any particular quantity of land, but *about* 25 beegahs, within certain boundaries laid down, he was entitled to whatever quantity the measurement showed to be comprised therein; that, as the measurement proved his claims to more than 25 beegahs, he petitioned the court to be allowed to amend his claim, and to have the suit transferred to a higher court, but his plea was disallowed.

As the sudder ameen repaired to the spot and personally inspected the locality, and found the appellant in possession of more land than he was entitled to, under the original decree, passed on the 4th February 1833, I consider his claim to the excess invalid; and having previously neglected to amend his claim, though perfectly aware of the fact of the measurement showing a much greater quantity of land to be in his possession than that sued for, the rejection of his plea on that point was, in my opinion, correct.

His other pleas, relative to the defendant's application being irregular and barred by the limitation laws, and the injustice of restricting his claim to the extent of land specified in general terms in the original plaint, I consider frivolous, and therefore dismiss the appeal, with costs, and confirm the order of the lower court, without notice to the respondent.

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THE 25TH JANUARY 1851.

No. 167 of 1849.

*Appeal from a decision of Syed Mahomed Ali Ashruff, Moonsiff of Behar, dated 31st July 1849.*

Syed Waheedooddeen, (Defendant,) Appellant,

*versus*

Lala Rahee Singh, Mungul Singh, and Kashceram, (Plaintiffs,) Respondents.

THIS suit was instituted on the 14th February 1849, to recover rupees 62-15, principal and interest, on account of rents of a sixth share of mouza Asabeglia, pergunnah Puchrookhee, according to a *kuboolcut*, dated 24th February 1846.

The plaintiffs represent themselves to be the proprietors of one-sixth of the village in question, and to have given a perpetual lease of the same to the defendant, on an annual jumma of Sicca rupees 31, from 1254 F. S., receiving the above cited agreement in return. Only rupees 20, however, having been paid for 1254 and 1255, they now sue for the balance of rupees 21 per annum, for both those years, together with rupees 12-8, for rents up to the Maugh kist of 1256, exclusive of batta and interest.

In the original plaint the defendant was described as Syed Wussecooddeen, and it was not till after their witnesses had been examined that the plaintiffs thought fit to rectify the mistake by a supplementary plaint filed on the 6th June.

The defendant on the 8th June replied, strongly objecting to the case being proceeded with on account of the above mistake, and urging that the rents claimed had been duly discharged by the plaintiffs having deputed an agent, who attached and sold grain to the value of rupees 75, but for which no account has been rendered.

The moonsiff considered the objections raised by the defendant, relative to the filing of the supplementary plaint, of no moment, and as the defendant had admitted the correctness of the *kuboolcut*, and the plaintiffs' witnesses had proved the claim, and the defendant had failed to establish the plea urged relative to the deputation of an agent, he was liable for the sum demanded, and accordingly decreed the suit against him.

The arguments pleaded, in appeal, are similar to those already noted in the defendant's reply; and, further, that the appellant was not allowed sufficient time to file his proofs.

In the trial of this suit, I do not think sufficient consideration was given by the moonsiff to the pleas urged by the defendant. The record shows that he was wrongly described; the requisite notices of the institution of the suit were issued in the name of *Wussecooddeen*, and the witnesses of the plaintiffs testified to the *kuboolent* having been executed by that individual. The moonsiff, therefore, was, I conceive, bound to issue fresh notice of the action on the plaintiffs' filing their supplementary plaint. This, however, was not done, nor was sufficient time allowed the defendant to establish the plea urged, relative to the deputation of an agent and sale of grain in liquidation of the demands against him. I therefore reverse the order of the lower court, and remand the case for re-trial. The value of the stamp of appeal to be refunded in the usual manner.

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THE 25TH JANUARY 1851.

No. 168 of 1849.

*Appeal from a decision of Moulree Syed Humeedooddeen Ahmud, Moonsiff of Aurungabad, dated 2nd August 1849.*

Syed Mahumdee, Tuhseeldar of Nowab Futteh Ali Khan Bahadur, (Defendant,) Appellant in the case of Bheechuk Sahoo and Ramchurn Sahoo, (Plaintiffs,) Respondents,

*versus*

Appellant, Aukhouree Kamptapersaud, and Musst. Nagbunsee Koor, wife of Aukhouree Lutcheenarain, deceased, (Defendants.)

THIS suit was instituted on the 7th September 1848, for the refund of rupees 23-2, the produce of an auction sale of attached property.

The plaintiffs state that the two last named defendants, being joint mokurureedars and proprietors of mouzas Aukhouree Khap, Obrah and Bijelee, pergunnah Juplah, took an advance of rupees 500, and gave them a farm lease of 2 shares (*minus* one-third belonging to Aukhouree Pertabnarin) of the villages Aukhouree Khap and Bijelee, on a jumma of rupees 85 per annum, from 1254 to 1262 F. S., and put them in possession. On the 18th Kartikh 1255, the plaintiffs received written instructions to pay out of the rents rupees 8-14 to Nowab Futteh Ali Khan, rupees 66-1 to Oomutool Aussen Begun, *alias* Begah Sahibeh, and others, and rupees 10 to Meer Tussuduk Hosein and others. Notwithstanding this, however, the tuhseeldar attached their crops in Aukhouree Khap, on the plea of a balance of revenue being due to the nowab as malik, by the mokurureedars for 1255, and had 68 maunds of grain sold for rupees 32, which he duly receiv-

ed; the plaintiffs therefore sue for the refund of rupees 23-2, being the balance of the sale proceeds, after deducting rupees 8-14, the sum claimable by the nowab, and which the tulseeldar had refused to accept when offered prior to the sale.

The tulseeldar replied that he knew nothing about the farm lease; that after payment of certain sums in liquidation of a debt due to Nowab Syed Ali Akbar Khan and which Oomutool Hosein Begum received, a balance of rupees 31, with 3 rupees *salamee*, remained to be collected for his master as revenue; that the inokurureedars had failed to pay their rents for 1253 and 1254, and defendant had been compelled to attach their property; and in like manner, on a balance of rupees 36-1 appearing against them for 1255, he had been obliged to resort to the same process to realize his master's claims; that if the plaintiffs' claims to the property by farm lease for 1254 was correct, they would not have omitted to make known their rights on the attachment of the crops for rents of that year taking place; they, however, had not done so, and their present objections had been raised solely at the instigation of the other defendants.

The moonsiff considered the plaintiffs to have established their claim to the farm lease of the property; that the document containing the instructions of the lessors relative to the payment of the rents had been duly attested, and from the facts of its having been written together with a bond, specifying all the particulars connected with this lease, by the same person, and attested by the same witnesses, and bearing the same date, and the defendant tulseeldar having attached his signature to the bond in token of his cognizance of the transaction, it was clear both documents were executed in his presence, and therefore vain for him to plead ignorance of either the farm lease or the document relating to the payment of rents. The moonsiff therefore decreed the case in favor of the plaintiffs, against the tulseeldar, and exempted the other defendants from all responsibility.

The defendant has urged no fresh arguments in appeal, save that his signature to the bond has been fabricated.

I see no reason whatever to disturb this decision. The plaintiff's claim appears to have been clearly established both by documentary and oral evidence, which the defendant utterly failed to refute, and therefore I dismiss his appeal, with costs, and confirm the order of the lower court, without notice to the respondents.

THE 25TH JANUARY 1851.

No. 169 of 1849.

*Appeal from a decision of Syed Mahomed Ali Ashruff, Moonsiff of Behar, dated 31st July 1849.*

Oodey Mahto and Cheta Mahto, (Defendants,) Appellants,

*versus*

Shah Moosee Ali, (Plaintiff,) Respondent, Anundee Mahto, son of Domun Mahto, deceased, for self and as guardian of Pokhun Mahto his minor brother, and Sherezumah Khan, Oozurdars.

THIS suit was instituted on the 27th November 1848, to recover rupees 58, 11 pie, 8 krants, principal and interest of a bond, dated 25th Jyte 1254 F. S.

The plaintiff states that, on an adjustment of accounts taking place between him and defendants, relative to the rents of a four annas share of mouza Tukkehe, *alias* Burhga, which he had let to them in farm from 1248 to 1255 F. S., they were indebted to him in the sum of rupees 49, but being unable to liquidate the debt at the time they executed the bond in question, stipulating to discharge the amount in the month of Jyte, when their lease would expire. The defendants having failed to act up to their engagement, and pleading inability to do so in consequence of the plaintiff having let a two annas share of the property to another party from 1256 to 1264 F. S., he is compelled to sue them for the debt.

The defendants deny having taken a farm lease of the property, and challenge the plaintiff to produce their *kubooleut*; they also declare the bond to be a fabrication and the action thereon to have been brought at the instigation of Poorun Loll, in consequence of his not obtaining possession of the property on the lease declared to have been given him by the plaintiff from 1256 F. S., urging at the same time that the plaintiff's share in the village amounted to only 1 anna and 12 dams, instead of 4 annas, and as the property had been leased to other parties from 1250 to 1258 F. S., and finally conditionally sold to Sherezumah Khan, the lease to Poorun Loll was invalid and worthless. Both the oozurdars filed statements in support of the defendants' answer.

The moonsiff remarks that the plaintiff's claim had been fully established by the *kubooleut* of the defendants, the evidence of witnesses, and the bond; that the defendants had filed no proofs in support of their pleas and had neglected to produce their witnesses, though three months had elapsed since the issue of the order for their attendance; that the other claimants had likewise failed to act up to the orders of the court, though nearly six weeks had elapsed since they were called upon to produce their proofs, therefore their respective statements were unworthy of consideration;

he accordingly decreed the case in favor of the plaintiff, at the same time declaring his decision not to prejudice the rights of parties in any future action relative to shares in the estate.

In appeal, it is urged that the witnesses examined to prove the bond, being servants of the plaintiff, were unworthy of credit; that the moonsiff should have required the attendance of the other subscribing witnesses to the deed, when the falsity of the claim would have been established; that the appellants had applied to the court for the re-issue of the summons for their witnesses, but their request was not heeded; that they invariably employed one Keshoo Mahto, a relative, to sign all papers for them, and as the bond in question was not so signed, it was a forgery.

As the appellants failed to establish their pleas by either oral or documentary evidence, and the plaintiff's claim was fully supported by both the *kuboolcut* and bond, and those documents were proved to be correct by the testimony of respectable witnesses, I consider the order of the moonsiff just and proper, and therefore confirm it, and dismiss the appeal, with costs, without notice to the respondent.

THE 28TH JANUARY 1851.

No. 170 of 1849.

*Appeal from a decision of Syed Muhomed Ali Ashruff, Moonsiff of Behar, dated 30th July 1849.*

Musst. Beebee Jan, (Plaintiff,) Appellant,

*versus*

Kurreem Hosein, seller, (son,) Musst. Nadirah *alias* Goolbehar, (wife,) Musst. Shoobratun, (daughter,) and her husband Amanut Ali, heirs of Hakeem Mahomed Mussoodh, deceased, and Musst. Khyraton, wife of Meer Zahoor Ali, subsequently amended by supplementary plaint to Beebee Khatoon, purchaser, (Defendants,) Respondents.

Sheikh Torab Ali for self, and as guardian of his minor brothers, Mahomed Nukee and Ameer Hosein, Petitioner.

THIS suit was instituted on the 24th August 1848, to obtain, by right of pre-emption, possession of a kutchah built house with tiled roof and appurtenances, situated in mahullah Sherepoor, kusbah Behar, and to cancel a deed of sale executed in favor of Musst. Khyraton, and correct that of the plaintiff in the sum of rupees 85.

The plaintiff represents herself as residing in the immediate neighbourhood of the house in question, and to have frequently made proposals for its purchase to the late owner, but they were refused. After his demise, however, she applied to Musst. Nadirah, his widow, and Shoobratun, his daughter, when they consented to



dispose of it for 66 rupees, and received as earnest money 5 rupees, on the 1st Kartikh 1255 F. S. Subsequently, however, they appear to have changed their minds, and disposed of the property to another party, and had a deed of sale drawn up for rupees 85; and on the matter coming to the notice of the plaintiff, she asserts her having sent by her servant, Chukhun, the sum above noted, *i. e.*, 85 rupees, and announced her purchase of the property, at the same time demanding the return of the deed of sale executed in favor of the other party. As all her entreaties, both personal and through the medium of others, proved in vain, she now sues for the annulment of the sale to Musst. Khyraton and possession of the property by correction of her own title deed.

Beebee Khatoon replied that plaintiff had no right of pre-emption whatever; that she never sent to her to announce her claim to the property; that Kurreem Hosein was rightful heir of the deceased, and therefore the two ladies had no power to sell the house without his consent; and as her deed of sale had been executed by Kurreem Hosein himself, it was a valid document; moreover, plaintiff had neglected to bring her action within the time allowed from the date of the sale.

Kurreem Hosein supported the above statement, and urged that, as the plaintiff had neglected to purchase the property when he first intimated to her his wish to sell it, she had now no claim; that the money had been sent to him long after the sale to Beebee Khatoon had been effected, and therefore was returned.

In consequence of discovery of an error in her plaint the plaintiff filed a supplementary one, to the effect, that she had first announced her purchase of the property and then sent the money, but by mistake the two acts had been transposed in her original statement. As this supplementary plaint completely altered the leading facts of the case, the moonsiff declared it to be inadmissible, and therefore nonsuited the plaintiff. She appeals against this decision, urging that her supplementary plaint merely corrected an error in her statement and therefore was admissible.

I quite agree with the opinion expressed by the moonsiff. It is very clear the plaintiff omitted to announce her claim to the property in the manner required, and therefore her subsequent declaration to that effect could not be received. I therefore dismiss the appeal, with costs, and confirm the order of the lower court, without notice to the respondent.

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THE 28TH JANUARY 1851.

No. 171 of 1849.

*Appeal from a decision of Moulree Syed Hameedooddeen Ahmad, Moonsiff of Aurungabad, dated 2nd August 1849.*

Boonead Sahoo, Radhee Ram, and Koonja Ram, (Plaintiffs,)

Appellants,

*versus*

Fukheera Khan, and on his demise by supplementary plaint, Sooltan Hussan Khan his brother, and Musst. Nowab Beebee and Pear Beebee, daughters of deceased, (Defendants,) Respondents.

THIS suit was instituted on the 29th August 1848, to recover rupees 72-5-3, principal and interest of a bond, dated 5th Assin 1255 F. S.

The plaintiffs declared the original defendant to have been indebted to them in the sum of rupees 65, and to have executed the bond in question, stipulating to repay the amount with interest after gathering in his crops of that year.

The defendant denied the debt and bond *in toto*, and pleaded that the action had been brought out of malice, in consequence of a dispute between him and the plaintiffs' relative to damage done to his crops by their cattle, and that his signature to the bond had been fabricated.

Sooltan Hosein Khan declared himself not liable for the debts of his brother, having inherited none of his property after his demise and lived separate from him for 12 years previous to his death.

The other defendants denied the debt, Pear Beebee at the same time declaring herself to be a minor.

The moonsiff considered the evidence of the three witnesses examined to establish the correctness of the bond insufficient; because one, the writer of the deed, had denied his signature and represented the document to be a fabrication, whilst the other two disagreed in their statements as to the description of accounts produced at the time of the balance due to the plaintiffs being struck, and on which the bond was executed. He therefore dismissed the suit, remarking that the defendants' alleged signature did not correspond with other acknowledged ones attached to other documents; and that the statement of the plaintiffs relative to the defendant, a man of property and substance, receiving grain from them for any purpose, was incredible.

In appeal, it is urged that the genuineness of the bond was fully established by the evidence of two witnesses; that Omed Lall, the writer of the deed, being a servant of a near relative of the defendant, had colluded with him to defeat their (appellants') claim; that they filed four other documents written by the same person to prove

his signature to the bond in question, but the moonsiff took no notice of either of them or the appellants' request to have certain witnesses, cited in their rejoinder, summoned to prove the fact of the defendants having offered to settle their claim by a *kistbundee*, which they refused to accept.

The investigation of the moonsiff in this case appears to me incomplete. If dissatisfied with the evidence of the witnesses examined, I conceive, before dismissing the suit, he was bound to require the attendance of those cited by the plaintiff's in support of their assertion, that the defendant had proposed an adjustment of their demand, and to give his reasons for rejecting the evidence of the documents filed by them to prove the signature of Omed Lall. The moonsiff, however, did neither, and, moreover, has omitted to ascertain whether the present defendants in the suit are the heirs of the original debtor or not. I therefore reverse his order and remand the suit for further investigation. The value of the stamp of appeal to be refunded in the usual manner.

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THE 28TH JANUARY 1851.

No. 173 of 1849.

*Appeal from a decision of Syed Mahomed Ali Ashruff, Moonsiff of  
Behar, dated 28th July 1849.*

Syed Sooltan Hosein, (Defendant,) Appellant,

*versus*

Syed Mahomed Mehdee for self and, as guardian of his infant daughters Eedoonissa, and Amceeroonissa, Syed Mahomed Akbar, and Syed Bahadoor Hosein, (Plaintiffs,) Respondents.

THIS suit was instituted on the 24th March 1847, to recover the sum of rupees 217-14-8, balance due as rent of a farm of a 6 annas, 2 dams, 17 cowries share, after paying the Government revenue and deducting 1 anna, 15 dams, 10 cowries, the shares of the other partners, in mouza Chuk Jaroolah Oogao-hafeez, according to a *kuboolcut*, dated 27th Bhadoon 1248 F. S., from 1249 to 1253 F. S.

The particulars of this suit are duly recorded at pages 74 and 75 of the Decisions of this court for June 1849, on the first of which month the case was remanded for re-investigation; the moonsiff having omitted to take evidence in proof of the claim as required by Circular Order of the 24th September 1832. The moonsiff was also directed to take into consideration the receipts cited by the appellant and inquire into their validity. The moonsiff now remarks that after receipt of the record, he, in conformity with the court's orders, called on the parties to file their proofs; that the plaintiffs produced a *kuboolcut*, and cited several wit-

nesses to support their claim, but the defendant had neglected to take any step to establish his pleas, though more than six weeks had elapsed since he was required to do so. As the defendant admitted the agreement, and the plaintiffs' witnesses proved the justness of the claim, and the defendant had failed to adduce any proof in support of his statement, and as the court could only call on the parties for their proofs, and this was the second occasion of the defendant's neglect in their production, the moonsiff considered the pleas set up by him altogether invalid, and therefore decreed the case against him.

The defendant again appeals, urging that the moonsiff omitted to issue the requisite notice on the remand of the suit, to ascertain if the parties were desirous of employing the same pleaders as on the occasion of the former trial, and consequently appellant, being absent at Monghyr at the time, had no opportunity to defend the case; that having no confidence in Lochun Singh, one of the three pleaders engaged by him on the first occasion, the defendant had appointed two others and forwarded his receipts to be filed in court, under date the 20th June. The suit, however, was decided without any consideration being given to them, or his witnesses being summoned, and therefore the decision was opposed to the rules of court and the orders of this court requiring the validity of his receipts to be tested. The record shows that the appellant appointed two pleaders to defend the action, the vakalatnameh being dated the 20th June 1849. Though this does not appear, however, to have been presented in the moonsiff's court till the 20th of the following month, yet I consider the pleas advanced in appeal insufficient. The appellant by his own showing entrusted all his proofs to his vakeel on the 20th June the pleader was present at the examination of the plaintiff's witnesses on the 25th and 26th July, and signed their depositions, and the suit was not decided till two days after. It was very clear therefore that the appellant was aware of the trial, and consequently for the non-production of his proofs before the moonsiff he alone is to blame. As the plaintiffs' claim was fully supported by both oral and documentary evidence, and the appellant has twice failed to establish his pleas, I consider the order of the lower court correct, and therefore confirm it and dismiss the appeal, with costs, without notice to the respondents.

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THE 28TH JANUARY 1851.

No. 176 of 1849.

*Appeal from a decision of Syed Mahomed Ali Ashruff, Moonsiff of Behar, dated 23rd August 1849.*

Juggernath Singh, (Defendant,) Appellant,

*versus*

Lala Jodha Ram, (Plaintiff,) Respondent.

THIS suit was instituted on the 1st March 1849, to recover rupees 248, principal and interest of a bond, dated 7th November 1838.

The plaintiff declares the bond in question to have been executed by the defendant on the occasion of his borrowing the sum of rupees 124, to enable him to pay certain balances of revenue due by himself and other shareholders of mouza Hurchand Purragh, pergunnah Puchrookhee, and which he promised to repay in 15 days, but has failed to do so.

The defendant admits having borrowed the money and given the bond, but pleads that the full amount with interest has been discharged; a receipt to that effect, dated 11th Aughun 1250 F. S., having been given him by the plaintiff.

The moonsiff considered the claim established, and therefore gave a decree in favor of the plaintiff, at the same time remarking that the defendant had failed to file any proof in support of his plea of payment, though six weeks had elapsed since the date of his being called on to do so.

In appeal, the plea of payment in full is repeated. The appellant also urges that he was unable to produce the plaintiff's receipt in consequence of its being with his son at Patna; that the plaintiff's witnesses gave collusive evidence, and as the repayment of the loan was declared to be demandable on the expiration of fifteen days, the claim, if just, should have been preferred then and not after such a lapse of time.

By the appellant's own showing he not only neglected to repay the loan on the expiration of the term specified on the bond, but allowed no less than five years to elapse ere he did so; his alleged receipt being declared to bear date 1250 F. S., whilst the bond was executed in 1838 or 1245 F. S. I do not therefore give any credit to his plea of payment. Besides, he had ample time allowed him for the production of his receipt, and, having failed to file it, must now bear the consequences of his own neglect. The parties examined in support of the claim being subscribing witnesses to the bond, and the execution of the deed admitted by the appellant, the exception taken by him to their testimony, is, in my opinion, altogether unworthy of consideration. I therefore dismiss the appeal, with costs, and confirm the order of the lower court, without notice to the respondents.

THE 28TH JANUARY 1851.

No. 177 of 1849.

*Appeal from a decision of Moulree Syed Humeedooddeen Ahmud, Moonsiff of Aurungabad, dated 5th September 1849.*

Petumbur Mahito, cowherd, (Defendant,) Appellant,

*versus*

Baboo Oodeynarain Singh, (Plaintiff,) Respondent.

THIS suit was instituted on the 9th April 1849, to recover rupees 13-8-6, principal and interest of a bond, dated 10th Aughum 1256 F. S.

The plaintiff declared the defendant to have borrowed the sum of rupees 12-15 from him, and to have executed the bond in question, stipulating to repay the amount by instalments of 6 rupees, in the end of Maugh, and rupees 6-15, in the end of Chyte, but had failed to do so.

The defendant denied the debt *in toto*, and pleaded that on the date of the bond he was from home, and therefore could not have executed it. He also urged various frivolous excuses to show that the action had been brought out of malice.

The plaintiff replied that the defendant had killed and made away with a deer which belonged to him, and had executed the bond for the above sum as the price of the animal.

The moonsiff remarks that from the evidence of several witnesses examined, it was clear the defendant had killed the plaintiff's deer, and executed the bond in question in lieu of the price thereof; therefore it was but right that the defendant should pay for the animal, though the bond on which the action had been brought, purported to have been executed for a money loan. Considering, however, the price fixed by the plaintiff for the animal to be excessive, and 5 rupees to be its full value, he decreed the case for that sum in favor of the plaintiff.

The defendant urges, in appeal, that the plaintiff having sued him for a bond debt, the moonsiff's decision, awarding the price of a deer, which he denies having killed, is incorrect, and that, if the charge of killing the animal had been true, the plaintiff would have complained to the criminal authorities, but had not done so.

As the evidence of several witnesses examined fully establishes the fact of the defendant having killed the deer, and executed the bond as the price thereof, I see no reason for disturbing the decision of the moonsiff, and therefore confirm it, and dismiss the appeal, with costs, without notice to the respondent.

THE 30TH JANUARY 1851.

No. 179 of 1849.

*Appeal from a decision of Moulvee Syed Humeedooddeen, Moonsiff  
of Aurungabad, dated 5th September 1849.*

Gosain Baluckpooree, (Defendant,) Appellant,

*versus*

Mohunt Seebhurun Geer, (Plaintiff,) Respondent.

THIS suit was instituted on the 20th March 1849, to recover rupees 22-1-6, the price, with interest, of a pair of bullocks and cart, which the plaintiff represents the defendant to have purchased of him for rupees 20, on the 26th Bysakh 1255 F. S., on the understanding that the amount should be paid in fifteen days; but not having liquidated the debt, the action is brought to enforce payment. The defendant admits having purchased the cart and bullocks, but pleads having made full payment on the 15th Chyete in the presence of respectable parties.

The moonsiff rejected the evidence of the defendant's witnesses as being totally unworthy of credit, and as payment of rupees 5 only had been established, a decree for the remaining rupees 15, was given in favor of the plaintiff.

The appellant urges against this decision that, by omitting to give him credit for the rupees 5, proved to have been paid, the plaintiff's claim for the full price was incorrect, and therefore should not have been entertained, and that the action had been brought solely out of malice.

The evidence of the witnesses examined relative to the payment of the money, by the appellant, is replete with improbabilities and therefore totally undeserving of any credence, and I quite agree with the moonsiff in its rejection. Under these circumstances I dismiss the appeal, with costs, and confirm the order of the lower court, without notice to the respondent.

THE 30TH JANUARY 1851.

No. 182 of 1849.

*Appeal from a decision of Moulvee Syed Humeedooddeen Ahmad,  
Moonsiff of Aurungabad, dated 7th August 1849.*

Toolseeram, father and guardian of Rampersaud, minor, petitioner,  
Appellant, in case of Doobey Hurkooram, (Plaintiff,)

Respondent,

*versus*

Dodraj Singh, (Defendant.)

THIS suit was instituted on the 2nd May 1849, for registration of the plaintiff's name, as proprietor of mouza Lahurbunjaree,

*aslee mi dakhilee*, Tappakhirah, pergunnah Bilonjur, valued at rupees 100-7-11, or three times the rent roll.

The plaint is to the effect that the defendant sold the property in question, with the exception of 25 beegahs of land and 10 moahwah trees thereon, to the plaintiff, for rupees 3901, and executed a deed of sale for the same, under date 18th Chyte 1256 F. S., and gave possession. As the property is registered as belonging to Doonear Singh, and the defendant obtained possession of the estate by decree of court, and has now sold the same to the plaintiff, he sues for the alteration of the registry and the insertion of his name as proprietor of the estate.

The defendant filed no answer.

The present appellant represented to the court that the estate of the defendant was divided into two parts, one of which, mouza Lahur, was let in farm to the plaintiff's son Bisheshur Ram, whilst the other comprising the villages Bunjarree, Puranadhee and Nowadhee, had been let in farm, on a twenty years' lease, from 1256 to 1275 F. S., to Rampershad, the petitioner's son, on an advance of rupees 1500, for which a deed of *bye-bil-wuffa* had been executed, under date the 21st Aughun 1255 F. S., the jumna being fixed at rupees 17-4. As the defendant had not repaid the advance, and the petitioner's deed bore date prior to that of the plaintiff, the defendant had no power to dispose of the property.

The moonsiff decreed the case in favor of the plaintiff, declaring his claim to be established by the evidence of the subscribing witnesses of the deed of sale, and the petitioner's representation, relative to the *bye-bil-wuffa*, to be unworthy of consideration, as he had not produced the document itself.

In appeal, it is urged that the moonsiff never allowed the petitioner time to produce his documents in support of his claim, but decided the case on the day following the presentation of his petition, without calling on him for proof.

The record shows the appellant to have petitioned the court on the 6th August 1849, and the moonsiff to have decided the suit on the following day. On the appellant's petition no order relative to the production of proof or the *bye-bil-wuffa* deed is recorded, nor is any reason given in the moonsiff's decision for not allowing the petitioner opportunity for so doing. I therefore consider the moonsiff to have decided the suit with unnecessary haste, and without due regard to the claims of the appellant, and accordingly reverse his order, and remand the case for further investigation. The value of the stamp of appeal to be refunded in the usual manner.

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THE 31ST JANUARY 1851.

No. 178 of 1849.

*Appeal from a decision of Moulree Syed Mahomed Furreedooddeen,  
Moonsiff of Jehanabad, dated 15th August 1849.*

Musst. Hoorun, Sheik Ramzan Ali, Shiek Fuzul Hoesin, and Sheik Sukhawut Hoesin, (sons), and Musst. Russoolun, Musst. Nuzzeerun, and Musst. Shureefun, (daughters), heirs of Sheik Yoosuf Ali, (Defendants,) Appellants,

*versus*

Meer Shujayat Ali, (Plaintiff,) Respondent, and Syed Wahid Ali, objector 1st.

Musst. Buderun, wife of Meer Buddul, for self and as guardian of Meer Bolakie her infant son, objector 2nd.

THIS suit was instituted on the 19th January 1849, for the refund of Sicca rupees 100, advanced on an *izarahnameh*, dated 5th Zehij 1248 Hijree, together with interest, or Company's rupees 213-5-4.

The plaintiff declared Sheik Yoosuf Ali, the ancestor of the defendants, to have borrowed from him and his brother Meer Buddul the sum of Sicca rupees 100, and to have given an *izarah* of 4 beegahs of aymah land in Chuck Doulut *alias* Gholamee Chuck: that in the deed cited it was conditioned that the proprietor of the land should receive one anna yearly as rent, whilst all other profits should be enjoyed by the farmers, and in the event of the loan not being repaid in Jyte 1245 F. S., the farm lease should continue. The plaintiff accordingly took possession, and up to 1245 F. S., disposed of the revenue derived from the farm in conformity with the stipulations quoted. In 1246 F. S., however, the village was resumed by Government, and the plaintiff and his brother dispossessed. In 1248 F. S., the property was settled with the various shareholders, among whom were the defendants, as heirs of Sheik Yoosuf Ali, who induced them to refrain from advancing any claim to the lands in question till the settlement was concluded. He and his brother therefore preferred no claim, in the full expectation that the defendants would restore them to possession of the farm as promised, but not having done so he is compelled to bring this action for the full amount of the loan, his brother having died in 1251 F. S., and his share of the sum advanced having been allotted to the plaintiff on a division of property taking place: plaintiff further intimates his intention of bringing another action for the refund of rupees 25, loaned under similar circumstances, and for which a separate *izarahnameh* was executed.

The defendants, with the exception of Sheik Ramzan Ali, filed an answer to the effect that, Yoosuf Ali, being a wealthy man, had

no occasion to borrow money, and never executed the *izarahnameh*; that the document had not been either registered or attested by the cazeer; that the plaintiff had not had possession during the lifetime of Yoosuf Ali, and his claim was barred by the limitation laws; that in fact the lands in question were not the property of Yoosuf Ali, but belonged to his mother, Musst. Buderun, who sold them to the defendants; that even if the *izarahnameh* was a correct deed, the plaintiff should have been nonsuited for claiming the whole amount, whilst the document showed his brother to have an equal share with him therein, and that the action had been brought at the instigation of Sadut Hosein.

The plaintiff replied that Sadut Hosein, being a relative of the defendants, had endeavoured to adjust all differences, but, otherwise, he had no concern with the suit; that he had been dispossessed only 8 years and 4 months, and therefore his claim was not barred; and as Musst. Buderun had caused her signature to be attached to the deed by Sheik Tofele Ali, as a witness, it was clear she had no interest in the land as asserted by the defendants.

Syed Wahid Ali represented his having a lien on the property, and therefore petitioned to guard against infringement of his rights hereafter.

Musst. Buderun declared no division of property to have taken place between herself and the plaintiff, and therefore his claim to her deceased husband's share of the advance was incorrect.

The moonsiff observes that as Sheik Ramzan Ali has filed no answer, his silence must be considered as a proof of the justice of the claim; that the *izarahnameh* was proved to be a correct deed by the evidence of witnesses, and the report of the nazir of his court whom he had deputed to make local enquiries. The plaintiff therefore was entitled to a decree. As however the *izarahnameh* showed the advance to have been made by both brothers, the plaintiff could claim only half the principal, and as he acknowledged having enjoyed the profits of the lands for 5 years, he could only recover interest for 3 years and 4 months. A decree was accordingly passed to the above effect.

In appeal, the arguments already noted in the defendants' answer are repeated. The appellants also urge that the nazir's report was made in collusion with the plaintiff, and that they brought the matter to the notice of the moonsiff, but no consideration was given to the subject.

The investigation in this case is manifestly incomplete. In consequence of the absence of Sheik Ramzan Ali, and his not appearing to have been served with a notice of the action, the moonsiff held a proceeding, under date 18th July 1849, and forwarded the requisite notice to be served on him, together with the usual notification affixed at his residence, through the moonsiff of Mahomadabad in zillah Ghazeepeer. The reply to this proceeding, dated the 8th August, was received by the moonsiff on the 15th idem. His deciding the

suit on the same day, without allowing the defendant even a day to file an answer, was therefore highly improper. Deputation of the nazir of his court for the purpose of making local enquiries was also irregular, such practice being considered objectionable and insufficient for the ends of justice, as shown by the Sudder Court's decision, in the case of Jyeram Bhuttacharge, petitioner, dated April 27th 1850. Moreover, as the appellants represented in the strongest terms the incorrectness of the nazir's report, I conceive the moonsiff was bound either to depute an ameen for a second investigation, or to summon witnesses to his own court to attest the correctness of the first. He however did neither, but contented himself with the nazir's simple declaration to that effect. Under these circumstances, I reverse the order of the lower court and remand the case for further investigation. The value of the stamp of appeal being returned to the appellants in the usual manner,

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THE 31ST JANUARY 1851.

No. 183 of 1849.

*Appeal from a decision of Moulree Syed Hameedooddeen, Moonsiff of Aurungabad, dated 5th November 1849.*

Lala Debeepersaud, (Defendant,) Appellant,

*versus*

Lala Kalee Churn, for self, and as guardian of his cousin Hurree Churn, (Plaintiff,) Respondent.

THIS suit was instituted on the 5th May 1849, to close a drain, by the reversal of a miscellaneous order passed by the magistrate of Behar, dated 24th March 1849. Suit valued at one rupee.

The plaintiff states that his residence and that of defendant are in the immediate neighbourhood of each other in mouza Purseah-purbut; but during his absence from home, the latter built a drain to carry off the water from the direction of his own house where no such drain before existed, and thus endangered the plaintiff's property. On repairing his house in 1256 F. S., plaintiff closed the drain, but on the defendant petitioning the criminal authorities, it was re-opened by order of the magistrate, for the reversal of which he now sues.

The defendant declares the drain to have been in his and ancestor's possession for many years past and to have always run in the same direction.

The moonsiff, considering that both parties had agreed to abide by the statement on oath of Rahum Ali, vakeel of his court and proprietor of Purseah, and as that person deposed in favor of the plaintiff, and the claim was also established by the evidence of witnesses, decreed the case in favor of the plaintiff and reversed the order of the magistrate.

The defendant appeals against this order, representing the statement of Ruhum Ali, to be insufficient and founded on the reports of others, and, further, that his witnesses had fully established his and disproved the plaintiff's claim. As the defendant agreed to abide by the statement of Ruhum Ali, and that person distinctly shows him to have no claim, and the plaintiff's witnesses bear ample testimony to the drain having been built of late years, and that the water from the defendant's house was formerly carried off by a drain in a different direction, I see no reason for interfering with the order of the moonsiff, and therefore confirm it, and dismiss the appeal, with costs, without notice to the respondent.



## ZILLAH WEST BURDWAN.

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PRESENT: HENRY C. HAMILTON, Esq., OFFICIATING JUDGE.

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THE 2ND JANUARY 1851.

Appeal No. 5 of 1850.

*Appeal from a decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of Zillah West Burdwan, dated 3rd January 1850.*

Kooraram Pandah, (Pauper,) Plaintiff,

*versus*

Musst. Gungamonee, widow and heir of Juggernath Doss, deceased, and Rammohun Banerjea, talookdar of lot Sook-moypoor, (Defendants.)

Rammohun Banerjea, Appellant.

SUIT for possession of  $14\frac{1}{2}$  beegahs of byrnutter lakhiraj land, situated in mouza Kishoorkoon, together with rent from 1250 to 1254, laid at rupees 749-15.

Upon hearing the petition of appeal in this case, and on examining the decision of the principal sudder ameen with the nuthee, it appears that no proceeding has been held by that officer, under Section 10, Regulation XXVI. of 1814, and whether the case is tried under Section 30, Regulation II. of 1819 or not, the requirements of that Section, and of Act No. XII. of 1843, must be duly fulfilled; the same rules of procedure being alike applicable to both description of suits. The judgment is therefore incomplete, and as, with reference to the decision of the Sudder Dewanny Adawlut, recorded at page 482, for the year 1850, case No. 129 of 1850, dated 14th September 1850, Maha Raja Mahataub Chunder, appellant, it does not seem to be necessary to enter further into the case, I decree the appeal and remand the case in order that the abovementioned defect may be, in the first instance, rectified, and then a decision, on its merits, issued afresh.

Value of stamp paper to be refunded in the usual way.

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THE 2ND JANUARY 1851.

Appeal No. 6 of 1850.

*Appeal from a decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of Zillah West Burdwan, dated 14th January 1850.*

Sreenath Roy, purchaser and talookdar of the putnee lot mouza Tautkanaly, appertaining to lot Altiapaturband, on his demise his widow Musst. Bamakashee, mother of Rakhaldoss, minor son of the deceased, and Bishunath Roy, (Plaintiffs,) Appellants,

*versus*

Lukhykaunt Chattoorjee and others, (Defendants.)

SUIT for possession of beegahs 42-3-7-10 of land, held under the false plea of its being punchokee deottur, situated in mouza Tautkanaly, laid at rupees 949-11-3, including rent for the year 1254 B. S.

By referring to the petition of appeal, to the decision of the principal sudder ameen, as also to the nuthee of this case, I do not find that any proceeding has been held by that officer under the provisions contained in Section 10, Regulation XXVI. of 1814, and whether the tenure is a punchokee (termed in this district *lakhiraj*) or not, the requirements of that Section, as also of Act No. XII. of 1843, must be attended to, while Section 30, Regulation II. of 1819, cannot affect them. The judgment is therefore incomplete; and as it is not necessary to enter further into the case, with reference to the decision of the Sudder Dewanny Adawlut in the case of Muharajah Muhataub Chunder, appellant, recorded at page 482, of the decisions for 1850, case No. 129 of 1850; I decree this appeal, and remand the case for the purpose of having the above noticed defect remedied, after which a fresh decision, on its merits, can be passed.

Value of stamp paper to be refunded in the usual way.

THE 2ND JANUARY 1851.

Appeal No. 7 of 1850.

*Appeal from a decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of Zillah West Burdwan, dated 1st February 1850.*

Kenaram Tewaree, putnee talookdar of lot Shahibgunge, and subsequently by purchase, in his stead, Musst. Mungla Dabya, (Plaintiff,)

*versus*

Hurry Mundle and others, heirs of Muthoor Mundle, ryut, deceased, (Defendants,) Appellants,

Moharaj Dheeraj Rajah Muhataub Chunder Bahadoor, Objector.

SUIT to assess beegahs 2,362-5-14 of land, situated in mouza Duldulce, at a jumma of rupees 1,562-2-10 per annum, for 1254 B. S., laid at rupees 1,562-2-10.

Upon hearing the petition of appeal, and the decision of the principal sudder ameen, it appears that no regular proceeding has been held by that officer, under Section 10, Regulation XXVI. of 1814; on the contrary, the roobakaree, dated the 1st of March 1848, is opposed to the intentions of that enactment as subsequently explained in Circular Orders, No. 55, dated the 13th of October 1848, although this case was decided long afterwards. The decision is consequently incomplete, and as, with reference to the decision of the Sudder Dewanny Adawlut recorded at page 482, of their decisions for 1850, it is unnecessary to enter further into the case, I decree the appeal, and remand the case in order that the above defect may be, in the first instance, remedied and then a fresh decision be passed on its merits.

Value of stamp paper to be refunded in the usual way.

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### THE 3RD JANUARY 1851.

#### Appeal No. 9 of 1850.

*Appeal from a decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated 21st February 1850.*

Rammohun Banerjea, talookdar of lot ghaut Jybulliar, jungle mehals, (Plaintiff,) Appellant,

*versus*

Pearce Mohun Bewah and others, (Defendants.)

SUIT to resume 359 beegahs of land, called Bunriar Kumar, &c., appertaining to lot ghaut Jybulliar, jungle mehals, stated to be held as lakhiraj by defendants, as also for possession, laid at rupees 1,439-6.

Upon hearing the petition of appeal in this case, and on examining the decision of the principal sudder ameen with the record thereof, no proceeding appears to have been held under Section 10, Regulation XXVI. of 1814, and whether this case requires to be tried under Section 30, Regulation II. of 1819, or not, the requirements of Section X. Regulation XXVI. of 1814, must be fulfilled. The judgment is therefore incomplete, and as, with advertence to the decision of the Sudder Dewanny Adawlut, recorded at page 482 for the month of September 1850, case No. 129 of 1850, dated the 14th September 1850, Maharajah Muhataub Chunder appellant, it does not seem to be necessary to enter more in detail in cases wherein this omission is discovered, I decree this appeal, and remand the case, in order that the abovementioned defect may be rectified, after which a decision afresh, on its merits, can be issued.

Value of stamp paper to be refunded in the usual way.



THE 3RD JANUARY 1851.

No. 12 of 1850.

*Appeal from a decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated 30th March 1850.*

Kenaram Chuckerbutty, (Plaintiff),

*versus*

Kenaram Tewarry, and, subsequently, in virtue of his purchase, Must. Mungra Dabya, (Defendant,) Appellant.

SUIT to obtain possession of 25 beegahs of lakhiraj burmutter and punchokee land, including tanks, &c., with wasilaut from 1245 to 1253 B. S., laid at rupees 779.

Having heard the petition of appeal, this day, and having compared the decree of the principal sudder ameen with the record, I do not find that any proceeding has been held under Section 10, Regulation XXVI. of 1814, and the requirements of this enactment must be attended to whether the case is tried or not under Section 30, Regulation II. of 1819. This omission makes the judgment incomplete, and as on such occasions it does not, with reference to the decision of the Sudder Dewanny Adawlut, noted in the

English Decisions for September 1850.

Case No. 129 of 1850, and 14th September 1850, page 482.

Maharaj Muhataub Chunder, Appellant.

the usual way.

margin, appear to be necessary to enter further into the case, I decree this appeal, and remand the case, in order that the above mentioned defect may be remedied, and a fresh decree issued on its merits. Value of stamp paper to be refunded in

THE 3RD JANUARY 1851.

No. 13 of 1850.

*Appeal from a decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated 16th April 1850.*

Ramnarain Adhikaree, (Plaintiff,) Appellant,

*versus*

Bhowanny Mal, the Government and others, (Defendants.)

SUIT for possession of 7 beegahs of lakhiraj land in mouza Nityanundpore, from which plaintiff has been dispossessed under the plea set forth of its being Ghatwally, laid at rupees 134-5-10.

Upon hearing the petition of appeal in this case, and on comparing the decision of the principal sudder ameen with the record connected with it, I do not find that any proceeding of the nature indicated in Section 10, Regulation XXVI. of 1814, has been duly drawn up. Whether therefore the case is tried under Section 30,

Regulation II. of 1819, or not, the Circular Orders, on the subject of enforcing the requirements of this Section, are decisive, and imperative, and must be attended to in all suits. The judgment is therefore

English Decisions for September 1850.

Case No 129 of 1850, dated 14th September 1850, page 482.

Maharaj Muhatab Chunder, Appellant.

I decree this appeal, and remand the case, in order that the above mentioned defect may be remedied, and a fresh decision passed, on its merits.

Value of stamp paper to be refunded in the usual way.

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THE 4TH JANUARY 1851

Appeal No. 14 of 1850.

*Appeal from a decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated 3rd April 1850.*

Khettermohun Patur, (Plaintiff,) Appellant,

*versus*

Seetanath Panjah and others, (Defendants.)

Respondents present without summons.

SUIT to obtain possession of 63 beegahs of land appertaining to mouza Hajrahpookur, together with mesne profits from the last half of 1251 to 1254 B. S., laid at rupees 542-9.

Upon hearing the petition of appeal in this case, and on referring to the proceeding of the principal sudder ameen, dated the 2nd of January 1849, stated to have been held under Section 10, Regulation XXVI. of 1814, alluded to in his decree, I find it is irregularly drawn up, and in direct opposition to Circular Orders, dated the 13th of October 1848 No. 55. Hence the judgment is incomplete, and as, with reference to the decision of the Presidency Court of Sudder Dewanny Adawlut, recorded at page 482 of September 1850, it does not appear to be necessary to enter further into detail, I decree this appeal, and remand the case for the purpose of having the defect, above indicated, duly rectified; after which a fresh decision can be passed on the merits.

Value of stamp paper to be refunded in the usual way, and as there is now a sudder ameen, this case will be transferred to him.

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THE 4TH JANUARY 1851.

Appeal No. 15 of 1850.

*Appeal from a decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated 11th May 1850.*

Puddumlochun Roy, (Plaintiff,)

*versus*

Manoollah Rajah, Gopal Singh and others, (Defendants,)

Manoollah, (Defendant,) Appellant.

SUIT to obtain possession of  $7\frac{1}{2}$  beegahs of punchooke lakhiraj sheottur land, situated in mouza Harinashra, with mesne profits for 1255 B. S., laid at rupees 142-8, calculated on 18 times value.

Upon hearing the petition of appeal in this case, and the decision of the principal sudder ameen connected with it, it does not appear that any proceeding has been held under Section 10, Regulation XXVI. of 1814, by that officer. To this an objection, in appeal, has been started, and whether the suit is tried under Section 30, Regulation II. of 1819 or not, the requirements of that enactment must be duly fulfilled. This judgment is therefore incomplete, and as it is not necessary by the precedent of the Sudder Dewanny Adawlut, recorded at page 482, of the English Decisions for September 1850, to enter further into detail, I decree the appeal, and remand the case in order that the omission, indicated above, may be rectified, and a fresh decree be afterwards issued on its merits.

Value of stamp paper to be refunded in the usual way.

THE 4TH JANUARY 1851.

Appeal No. 16 of 1850.

*Appeal from a decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of Zillah West Burdwan, dated 21st May 1850.*

Gunganarain Roy, (Plaintiff,) Appellant,

*versus*

Rajah Damoodur Singh, Udhurj and others, Defendants.

Govind Ghur, Oozurdar.

Rajah Damoodur Singh, Respondent, present without being summoned.

SUIT to recover possession of 600 beegahs of jungle land, with value of timber cut and carried off by defendants, and for the reversal of an order issued under Act No. IV. of 1840, laid at rupees 1595.

Upon hearing the petition of appeal in this case, and on referring to the proceeding of the principal sudder ameen, dated the 3rd of March 1849. mentioned in the decree connected with it, I find

that the objection started, in appeal, that no regular proceeding has been held under Section 10, Regulation XXVI. of 1814, is correct. The proceeding quoted being altogether opposed to Circular No. 55, dated the 13th of October 1848, and the issues not having been properly drawn, the judgment is therefore incomplete, and as, with reference to the precedent of the Sudder Dewanny Adawlut, case No. 129 of 1850, recorded at page 482 of the English decisions for the month of September 1850, Maha Rajah Muhatab Chunder appellant, it is not necessary to enter further into cases where the omission is discovered. I decree the appeal, and remand the case, in order that the defect, above indicated, may be, in the first instance, rectified; after which a fresh decision, on its merits, can be passed.

Value of stamp paper to be refunded in the usual way. Respondent having appeared, without summons, must pay his own costs in appeal.

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#### THE 4TH JANUARY 1851.

##### Appeal No. 17 of 1850.

*Appeal from a decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated 20th May, 1850.*

Chundermohun Singh Baboo, (Plaintiff,) Appellant,

*versus* .

Sreekaunt Roy Goshein and others, (Defendants.)

Rajah Damoodur Singh, one of the defendants, present without being summoned.

SUIT to obtain possession of about 250 beegahs of jungle and other land appertaining to mouza Mooktatole, with value of trees plundered by defendants, and for the reversal of an order issued under Act No. IV. of 1840, laid at rupees 591.

This case and the preceding appeal, No. 16 of 1850, are in all essentials the same; and as the principal sudder ameen has not prepared a regular proceeding, under Section 10, Regulation XXVI. of 1814, drawing out the issues, but has acted in direct opposition to Circular No. 55, dated the 13th October 1848, as pointed out in my decision of this date in appeal No. 16, his judgment is incomplete. I therefore, for similar reasons as expressed in that case, decree the appeal, and remand the case, that the defect indicated may, in the first instance, be remedied; after which a fresh decision, on its merits, can be passed.

Value of stamp paper will be refunded in the usual way, and as Rajah Damoodur Singh, one of the defendants, respondent, has appeared without notice, he must pay his own costs in appeal.

This case will continue in the principal sudder ameen's court.

THE 30TH JANUARY 1851.

Case No. 18 of 1850.

*Regular Appeal from a decision of Chunder Seckur Chowdhry, Principal Sudder Ameen of Buncoorah, dated 18th July 1850.*

Kether Mohun Ghose and others, (Defendants,) Appellants,

*versus*

Ras Beharee Ghose, (Plaintiff,) Respondent.

SUIT valued at rupees 12, annas 4.

In the original suit Ras Beharee Ghose sues for possession of two cottahs of land in mouza Dessora, which he states to be his mal holding, and that Kethur Mohun Ghose and others, the defendants, forcibly oppose his building a house thereon.

Plaintiff in support of his claim produces:

1st. A pottah from the maliks of mouza Dessora, dated 1213 B. S., granting four beegahs nine cottahs of mouza Dessora, (my julkur) to Ticca Ram Ghose, ancestor of plaintiff, for a consideration of 32 rupees 4 annas, to be paid annually as malgoozarce.

2nd. Two witnesses whose evidence proves continued possession, by him or his family, of the land in question. Defendants allege that the land is their lakhiraj property and adduce in evidence:

1st. A kubooleent of 1229 B. S., stated to have been given to themselves by Bullye Ghose, (a brother of plaintiff), agreeing to pay 1 rupee 6 annas 10 gundas, for four and a half cottahs of land, (pooshtatalab Doornapokur) being part of the embankment of Doornapokur.

2nd. One witness to the authenticity of the above kubooleent, and to the possession of defendants of the land claimed by plaintiff.

This case was, in the first instance, instituted in the moonsiff's court by both parties, by Kether Mohun Ghose and others, *versus* Ras Beharee Ghose, for rent of their lakhiraj lands, and by Ras Beharee Ghose, against Kether Mohun and others, for possession as in the present instance. The moonsiff nonsuited both parties on the grounds that the dispute had reference solely to lakhiraj rights, and was not cognizable by him.

On the case, in a renewed form, coming before the principal sudder ameen, which, with reference to its small value, was occasioned by the nature of dispute as between lakhirajdar and malgoozar, precluding its being dealt with by the lower courts, that officer forwarded it to the collector for opinion, under Section 30, Regulation III. of 1819. The collector returned the misl with his record that no lakhiraj title was made good. The suit was then tried on its merits solely as regarded right of possession.

The principal sudder ameen decrees the case in favor of plaintiff on the grounds.

1st. That the pottah granted by former maliks of Dessora, to Ticcaram Ghose, still holds good as proved by the corroborating evidence of two witnesses.

2nd. That the authenticity of the kubooleut, produced by defendants, is unsupported by either probability or evidence. The one witness alone (out of many named) produced by defendants, having stated, first, that the kubooleut was executed by Bullye Ghose two or three years back, and then that Bullye Ghose died five or six years ago. That there is also great discrepancy in this witness's description of the boundaries noted in the kubooleut.

3rd. The date of the kubooleut being no where alluded to either in the urzee drawn of the present case, or in the urzee (No. 227) presented in the moonsiff's court, in the trial above mentioned, both these urzees having been entered prior to the production of the kubooleut in court.

The appeal is grounded on the former local investigation before the moonsiff, with the moonsiff's decision of nonsuit, not having been fully considered by the principal sudder ameen, and the actual maliks of the estate not being included as parties to the suit; and on only one of many named witnesses having been examined by the court. The original grounds of defence are also recapitulated.

On examination of the moonsiff's decree, nonsuiting Ras Beharee Ghose, now for the first time produced in court, I can find no cause to differ from the principal sudder ameen's decision. Neither does the non-interference of the maliks in any way invalidate the right of respondent to hold possession of his māl land, *quoad* the claims of appellants. The non-production of more witnesses is entirely the fault of appellants themselves. I fully concur in the principal sudder ameen's remarks upholding the validity of respondent's pottah, and on the insufficiency both of the kubooleut produced by appellants, and the evidence adduced in support of its authority. I therefore confirm his decree in favor of Ras Beharee Ghose in full, with costs, and wasilaut as thereon detailed.



## ZILLAH CHITTAGONG.

PRESENT : A. SCONCE, ESQ., OFFICIATING JUDGE.

THE 4TH JANUARY 1851.

No. 9 of 1850.

*Appeal from a decision of Pundit Sreenath Bidyabagish, Principal  
Sudder Ameen, dated 5th April 1850.*

Esureepershad, (Plaintiff,) Appellant,

*versus*

Musst. Kosulea, and Kantopershad, (Defendants,) Respondents.

ON the 6th August last, I disposed of this case on its merits; and on this occasion, reviewing my first order, I am confined to the discussion of that part of it, which discharged Kantopershad from liability in the matter of the decree.

I have listened largely to the representations of Kantopershad, and have given him ample opportunity to adduce such evidence as he thought calculated to prove that he did not succeed to the possession of any property left by Goomance Singh Huzaree, by whom originally the debt sued for was contracted. But it appears to me that he has failed to support the plea urged by him in refutation of the new evidence preferred by the appellant. What I rely upon, is a petition presented to the collector on the 8th January 1842, by Musst. Bapchee, the mother, and Musst. Kosulea, the widow of Goomance Singh, and this respondent, Kantopershad, with the view to the substitution of their names, and the names of Kantopershad's two brothers, in lieu of that of Goomance Singh, as the proprietors of turuf Futeh Singh Huzaree. In the body of the petition it is written as plainly as language can write, that Kantopershad, as well as Musst. Bapchee and Kosulea, was in possession of the estate (Mutrooka) left by Goomance Singh. This must be understood as the positive assertion of Kantopershad himself, as well as on admission made by the two ladies. True the petition was presented by a mooktar; but the powers of this person are not repudiated; and after the ordinary inquiry, the application was acceded to by a roobukaree, passed on the 28th June 1843.

It is mentioned to me verbally that, at the period in question, Kantopershad was a minor, being only fifteen when the petition was presented; but men giving him the benefit of that assumption, (though it is not a point which he urged in his written plea, and has offered no proof of it,) it was obviously understood at the time that



he was competent to grant a mooktarnamah; competent, I mean, in the estimation of the parties interested, and that he asserted that as a fact which, above all others, the widow and mother of the deceased, who were parties to his application, were most competent to verify or to deny.

Now it is averred that Goomanee Singh held, not the whole but only one-fourth share of turuf Futeh Singh Huzaree, and that Kantopershad and his brothers, as heirs of Bhowanee Singh, a brother of Goomanee Singh, held as a matter of right another fourth share of the same estate; and in fact that, originally, four brothers held four equal shares; but I must remark that, though now I find that Kantopershad did by his own admission acquire an interest in the estate (Mutrooka) left by Goomanee Singh, it is not my purpose to fix either the amount of that estate, or Kantopershad's liability. As if to corroborate his objections, Kantopershad states that Kosulea, his aunt-in-law, in Poos last, sold to him the one-fourth of turuf Futeh Singh, that is, the very fourth which she had acquired from her husband: but whether this be true or not; and if true, whether it be legal or not; the fact remains that Kantopershad declared himself to have acquired in succession to Goomanee Singh, a share, not in this specific estate or that but, generally in all the property left by him at his death. I neither define the share acquired by Kantopershad, nor the value or nature of the Mutrooka in which he acquired an interest; but it seems to me that it would be inequitable not to hold him bound as one who benefited by Goomanee Singh's death to account *pro tanto* for his debts.

That Kantopershad's brothers have not been made defendants in this action, does not affect his own liability. They cannot in execution be made answerable: only the interest acquired by Kantopershad in Goomanee Singh's estate, (Mutrooka) can govern the demand made upon him; not the interest which his brothers may have appropriated.

Nor, further, can I consider the joint declaration made by Kantopershad, Bapchee, and Kosulea, to be nullified by the nature of the administration granted to the two latter, on the 3rd July 1839. Then Bhowanee Singh, father of Kantopershad, had also applied to be made kaim mokam, that is, administrator, or more strictly, representatives of the deceased Goomanee Singh. The powers of representatives were not sought for it appears for any immediate purpose, but only that the several petitioners should be recognized by the judge as the virtual representative of the deceased, and the judge looking upon Bapchee and Kosulea as the legal heirs of Goomanee Singh, passed an order in their favor. It is not necessary to consider what the two ladies did or did not under that order; and *quoad* the property of Goomanee Singh, I cannot but consider that they themselves, it may be in abandonment of their legal rights, asserted that Kantopershad was their co-sharer.

With these views, I associate Kantopershad with Kosulea in the decree already passed. So far as he may have acquired and enjoyed the property of Goomanee Singh, he must be answerable for the sum claimed, with interest and costs of both courts.

THE 7TH JANUARY 1851.

No. 403 of 1850.

*Appeal from a decree of Moolree Syud Ahmed, Moonsiff of Hutteah, dated 2nd August 1850.*

Kishnomohun Nath and others, (Defendants,) Appellants,  
*versus*  
 Goluckchunder Seal, representative of Hurchunder Seal,  
 (Plaintiff,) Respondent.

THE moonsiff has been at so little pains to discriminate the respective pleas of the parties to this suit, that it must be remanded for re-trial. Both parties claim the disputed land as under tenants, and both point to distinct leases and to several renewals in their favor; and, not to say that the moonsiff has not discussed the genuineness or the legal force of these several settlements, he has not stated at all the grounds of the (defendants') appellants' claim. It is true that the defendants' answer is short and incomplete; but this is partly accounted for by the circumstance that they themselves had instituted a separate suit relating to the rent of the same land; and, at all events, the moonsiff was bound not to pass judgment upon their answer, as he professes to do, without a full understanding of the facts relied upon.

I will not confine the moonsiff in his enquiries; but I will indicate certain points, the non-investigation of which must leave his decision insufficient. Plaintiff, respondent, in his plaint, states that he and Ramhuree first acquired a neem howalah of the land in 1250 B. S. Before me the appellants trace their possession of the land up to 1238. Here then is one issue to be tried. Did the appellants' possession precede respondents? and, if it did so, was their possession annulled, or in any way affected by the pottah which respondents profess to have obtained in 1250?

Again, as it appears to be admitted by both sides that, the chur, within which the land lies, was definitely farmed by Government to Mr. Jackson, Gopenath Boodhee Munt and others; it should be considered whether or no the farmers issued pottahs to one or both of the litigants; what the validity of such pottahs, if given; and if not given or if not valid, which of the parties, by any preceding circumstances, should be considered to have legal possession of the land at the date, that is the 9th May 1252, upon which, from the alleged forcible dispossession of the defendants, the plaintiff founds his suit.

The value of the appeal stamp will be refunded.

THE 25TH JANUARY 1851.

No. 98 of 1850.

*Appeal from a decree of Mr. Finney, Sudder Moonsiff of Chittagong,  
dated 1st February 1850.*

Mahomed Azeem, (Plaintiff,) Appellant,

*versus*

Fukeer Mahomed and Mahomed Azeem, (Defendants,) Respondents.

IN this suit, plaintiff, the purchaser of 4 krants, 5 gundahs, from Shamut Alee, who had purchased the same at a public sale held in execution of a decree, seeks to oust from possession of this land, the defendants, respondents, who, admitting plaintiff's right as a purchaser, profess to be entitled to hold the land as ryots, paying plaintiff rent. Before this, a case of forcible dispossession, between the same parties, had been instituted in the magistrate's court, and the session judge, on the 13th July 1848, trying that case in appeal, adjudged possession to these respondents.

Now whether I refer to the witnesses of the plaintiff or to those of the defendants, I think there is no reason to doubt that the defendants, or their father Mudun Saudagur, for a few years, have cultivated the land now in dispute: but I have a still deeper question to consider on this occasion; namely, what was the condition of their occupancy and how did it arise? In defending this action, defendants plead a settlement made in their favor, on the 10th Srawun 1207, by Shamut Alee, from whom, nearly three years later, plaintiff, appellant, purchased the land; and, unquestionably, if that settlement were genuine, it might go far to justify the claim now preferred by them. But I must observe that the genuineness of the pottah produced is not to be relied upon. It was written in 1207, say the defendants, that is in 1245 A. D., but as in the complaint made by them to the magistrate, on the 19th May 1848, they say nothing about this pottah, relying exclusively on their possession for nine or ten years, it must be inferred that the pottah, at that date, had not been prepared.

Thus then my conclusion is that though the defendants, respondents, did for some years hold and cultivate the land, their tenure was that of mere tenants at will: for when I came to consider under what plea they should be entitled to supersede the appellant, in the immediate occupancy of the land, I find not only no evidence upon which I can rely, but no specific title set forth. I have no reason to conclude that their tenure is permanent or hereditary; nor that it is for a period of years; and the only alternative remains that they are liable to be ousted at the will of the rightful occupant of the land, this appellant. I so decree with all costs payable to appellant.

THE 27TH JANUARY 1851.

No. 74 of 1850.

*Appeal from a decree of Moulree Ferhutoollah, Moonsiff of Bhojpore,  
dated 14th January 1850.*

Ram Soonder Sen and Ram Mohun Sen, (Defendants,)  
Appellants,

*versus*

Shureepoonissa, (Plaintiff,) Respondent.

THE question raised by the (plaintiff,) respondent, in this case, was the amount of assessment payable by her, for her talook, consisting of d. 3, 9, 4, 2, within the appellants' resumed mehal; and by the assent of the parties, was expressed before me in appeal. I have only to declare that it is agreed that the jumma of the land shall be rupees 50-1 per annum, and that each party shall pay their own costs.

THE 27TH JANUARY 1851.

No. 75 of 1850.

*Appeal from a decree of Moulree Ferhutoollah, Moonsiff of Bhojpore,  
dated 14th January 1850.*

Ram Soonder Sen and Ram Mohun Sen, (Defendants,)  
Appellants,

*versus*

Shureepoonissa, (Plaintiff,) Respondent.

THIS suit was instituted to recover an excess of rent levied by the appellants, the zemindars of the respondents, and a decree was passed in favor of the respondent by the lower court. But it is admitted by the parties this day before me, that in giving effect to the assessment, which in a separate suit has been agreed upon, the respondent has no claim for any over charge upon the appellants; accordingly it is agreed that the moonsiff's decree shall stand reversed, and that the parties respectively shall bear their own costs.

THE 31ST JANUARY 1851.

No. 5 of 1850.

*Original Suit.*

Sheikh Obedoollah Khan, (Plaintiff,)

*versus*

Ayecnooden and others, (Defendants.)

THIS suit was instituted by the plaintiff, zemindar, to oust the defendants from the land held by them, and to recover arrears

of rent from them at the value of 2 rupees a kanee; inasmuch as, contrary to the terms of the settlement made with them on the 30th Assar 1204, they have failed to enter into a revised settlement at an enhanced rate. To this defendants answered that the cultivated land held by them was not d. 1, 12, 3, 3, 2, as stated by the plaintiff, but only d. 8; and, moreover, that both by the terms of the original settlement, and by a decree passed by a principal sudder ameen, on the 18th April 1849, the assessment of their d. 1, 8, was determined to be rupees 24 per annum, that is, at the rate of 1 rupee the kanee. On the 24th ultimo, I called the attention of the parties to the issues before me, first, as regards the legal right of the plaintiff to oust, the defendants and, next, as respect the facts included in the disputed rates and extent of cultivation.

Having now gone over the proceedings, I must find that the plaintiff has failed in justifying the primary object of his suit. He seeks to oust his tenants because they did not enter engagements for the years 1210 and 1211, at the enhanced rate of 2 rupees a kanee, in lieu of the rate of 1 rupee a kanee, provided for by the settlement of 1204. But the objection insisted upon by the defendant's pleader, which I must uphold at the very threshold, is that the plaintiff neither at the commencement of the year 1210 nor of 1211, served a written notice on the defendants, calling on them to pay the specific rent; their failure to pay which he now urges as a ground for the forfeiture of the itmam held by them.

He proves to me that for the years 1207 and 1208, he served such notices: but here we have a new cause of action. The question before me now is not the default of the defendants for 1207, or 1208, or 1209: the principal sudder ameen's decree of the 18th April 1849 governs those years; and as the plaintiff declares his right to oust, owing to the defendant's declining to pay an enhanced rent for 1210, I am confined by law to the ascertainment of the fact of his having served upon the defendants preliminary notice of his intention to levy the enhanced rent for that year and 1211. As it is, we have nothing but a summary suit for the arrears of 1210, instituted on the 1st August 1849, corresponding with 1211.

Possibly, to some extent, the plaintiff may have been misled by the terms of the principal sudder ameen's decree already adverted to. On that occasion, the principal sudder ameen found that the terms upon which the first settlement was guaranteed by the zemindar to his tenants, could not, *quoad* the years 1207, 1208 and 1209, be held to have been fully discharged, if he were permitted to charge a higher rent for those years than that entered in the pottah; and he intimated his opinion that, from 1210, the plaintiff might take what steps were open to him for ousting the defendants. But, obviously, this order did not absolve the plaintiff from the necessity of giving the defendants the option of holding, under the terms prescribed by law,

the lands conferred by the original lease for 1210 or 1211, either at the enhanced rate specified by the zemindar, or in defiance of his specification, if they considered themselves so justified by the tenor of the rights enjoyed by them.

Under these circumstances, for the years 1210 and 1211, I cannot find that the plaintiff is entitled to oust the defendants, nor to levy a higher rent than 16 rupees a droon; and as the defendants before me admit that the cultivated land occupied by them amounts to d. 1, 12, 3, 3, 2, I decree arrears at 16 rupees a droon upon that land. Costs will be charged to defendants at this proportion.

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PRESENT : S. BOWRING, ESQ., OFFICIATING ADDITIONAL  
JUDGE.

THE 2ND JANUARY 1851.

No. 410 of 1850.

*Regular Appeal from a decision of Moultree Abdool Jubbur, Moonsiff of  
Issapore, dated 7th June 1850.*

Hyder Ali, Zeenut Ali, Kooleca Bebee, and Dhoya Bebee,  
(Defendants,) Appellants,

*versus*

Issanchunder, (Plaintiff,) Respondent.

SUIT instituted 28th December 1849, for possession of 7 krants, 8 gundahs, 11 cowrees of land in mouza Durhoon, wasilaut rupees 33-2-9, and value at the sale rupees 109-2-9.

The plaintiff stated that at a sale by the moonsiff, on the 5th February 1849, he purchased the above land, the property of Dewan Ali, sold in virtue of a decree; that the land is occupied by defendants as jotdars, and that they will neither pay rent, nor give up possession.

Zeenut Ali, defendant, replied that 18 gundahs of land had been separated from the turuf, and given as towfeer to turuf Doorga Sein, as per decree of 4th May 1849, and settled with the zemindar.

The other defendants claimed the land as talooks held at a low rent.

The moonsiff observed that the plaintiff had a right to the land, and that the claims to hold it as talook were false. The parties having no power to grant pottahs, the suit for separating 18 gundahs of land from the tenure, was decided without plaintiff having been made a party to the suit, and on the precedent of Gunesh Dutt *versus* Ramilyal, (Sudder Dewanny Adawlut Reports, 7th September 1847,) he set aside the decree of 4th May 1849. The whole of the land in dispute was attached by the court, and sold in the usual manner. He decreed for plaintiff.

The defendants appealed, repeating their assertions, stating that plaintiff should have sued them separately, and that the moonsiff did not call on them for proofs.

#### JUDGMENT.

The plaintiff has proved his purchase at the moonsiff's sale of the property of Dewan Ali, and that this property consisted of the land now sued for, which had been attached in the usual manner. He has further proved that Hyder Ali, defendant, demanded of him 5 rupees, and on his refusal to pay, withheld his rent in concert with the other defendants.

On the 18th February 1850, defendants were called on to exhibit their proofs. Zeenut Ali alone filed a decree he had collusively obtained, and which the moonsiff very properly set aside.

The object of defendants, in having the case undefended in the moonsiff's court, and then appealing, can only have been to throw impediments in the way of justice, and especially the execution of the court's decree against Dewan Ali.

I shall exempt Zeenut Ali who made a defence, though a fraudulent one, in the lower court. The other defendants, appellants, I fine 10 rupees each, for a litigious appeal, and direct the nazir to levy the amount.

The appeal is dismissed.

## THE 2ND JANUARY 1851.

No. 411 of 1850.

*Regular Appeal from a decision of Moulree Abdool Jubbur, Moonsiff of Issapore, dated 11th June 1850.*

Mokeem and Mahomed Tukkee, (Defendants,) Appellants,

*versus*

Moonna Bebec, (Plaintiff,) Respondent.

SUIT instituted 22nd December 1849, for value of 200 arees of rice, as per tumussookh, Company's rupees 20.

The plaintiff stated that on the 21st Kartick 1200, her late husband advanced to defendants 16 Sicca rupees, for which they agreed to deliver 200 arees of rice, in Poos of that year. Her husband died in 1209, leaving plaintiff and minor children.

The tumussookh was given to Bakur Ali, plaintiff's husband, and Jan Ali his brother, also deceased.

The defendants denied the debt. Mahomed Tukkee said he was a minor at the time and could not write.

The moonsiff observed that plaintiff had exhibited a certificate entitling her to collect the debts of her husband and had proved the tumussookh. He decreed for rupees 20, the value of the rice.

The defendants appealed, repeating their defence, and stating that the witnesses to the bond live at a distance.

## JUDGMENT.

There seems no good reason for doubting that the bond is genuine. The witnesses speak positively to payment of the money, and do not mention the age of Mahomed Tukkee, further than that they do not know how old he is. Mahomed Tukkee has brought no evidence to his age, he merely states he was a minor, without specifying what his age was then or now.

I dismiss the appeal.



THE 2ND JANUARY 1851.

No. 412 of 1850.

*Regular Appeal from a decision of Moulree Hadee Ali, Moonsiff of Rungunneeah, dated 18th June 1850.*

Futteh Ali and Dewan Ali, (Defendants,) Appellants,

*versus*

Kumur Ali, (Plaintiff,) Shum Bebec and others,  
(Defendants,) Respondents.

SUIT instituted 31st December 1849, for rupees 42, principal and interest, due on a bond.

The plaintiff stated that the appellant, with Buksha Ali, and Shamut Ali, gave him, on the 19th Anglum 1203, a tumusookh for rupees 21. Two of the debtors being dead, he sues their heirs who admit the demand.

The defendants replied that plaintiff promised to procure the loan of rupees 21 for them, from his mother; and thus obtained the tumusookh. He then said that he had quarrelled with his mother, and had destroyed the bond, for value of which he now sues. There were other dealings between plaintiff and defendants who traded in partnership.

This bond had been altered.

The moonsiff observed that the plaintiff had brought forward many respectable witnesses to the tumusookh, and to defendant having admitted the debt and defendant's name to the plaintiff having ever said he had destroyed the bond. He did not consider the bond to have been altered, and decreed for plaintiff.

The defendants appealed, repeating their assertions, and stating that plaintiff's witnesses were not trustworthy.

#### JUDGMENT.

The plaintiff has proved the bond, and payment of the money; as also admission by defendants of the debt being due, and no good reason has been adduced why the evidence should be rejected.

I confirm the moonsiff's decision, and dismiss the appeal.

THE 2ND JANUARY 1851.

No. 413 of 1850.

*Regular Appeal from a decision of Moulree Syad Jonab Ali, Moonsiff of Satkanneeah, dated 7th June 1850.*

Hyder Ali *alias* Hudoo, (Defendant,) Appellant,

*versus*

Sadij Ali, (Plaintiff,) and Noor Buksh, (Defendant,) Respondent.

SUIT instituted 1st August 1849, for 32 rupees, value of 312, 5 seers, arees of rice, as per tumusookh.

The plaintiff stated that, on the 14th Jyte 1209, the defendant Hyder Ali gave them the tumussookh, engaging to deliver the rice on an advance of rupees 25.

Hyder Ali defendant denied that he received the money 25 rupees, or engaged to deliver the rice. Plaintiff paid him 15 rupees, and received in return a lease of 2 kanees of land for four years, by which the loan was to be re-paid. Plaintiff held possession for one year 1209, and then let the land to Noor Buksh. Noor Buksh, defendant, on his own petition, said the land he occupied was his own by purchase of Aman Ali. It is 1 k. 18 g., not 2 kanecs.

The moonsiff considered the tumussookh proved, and the story of defendant contradictory; he saying sometimes 12, sometimes 13, and 15 rupees to have been advanced. He decreed for plaintiff.

The defendant appealed, stating that, not being able to procure an 8 annas stamp, he gave a tumussookh instead of it, on 2 annas stamp; that plaintiff only paid 15, not 25 rupees, and gave a receipt for 5; that he was confused when attending the moonsiff's court, and contradicted himself.

#### JUDGMENT.

The plaintiff has proved the bond and payment of the money. The defendant's reply is too full of contradictions to allow any confidence to be placed in it. The plaintiff's witnesses admit that there was some conversation about making over land in lieu of payment; but that finally the bond was executed. As far as can be ascertained from defendant's statement, he wishes, by disputing the bond, to try the validity of the deed of sale held by Noor Buksh. This is a separate matter, and cannot be adjudged with the bond debt.

The appeal is dismissed.

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THE 4TH JANUARY 1851.

No. 239 of 1850.

*Regular Appeal from a decision of Mr. L. W. Hutchinson, Moonsiff of Putteeah, dated 23rd March 1850.*

Musst. Anund Mihee and Oomancee, (Defendants,) Appellants,  
*versus*

Chundee Churn Gho, heir of Sreemuthee Omola,  
(Plaintiff,) Respondent.

SUIT instituted 3rd May 1849, for possession of 1 k. 17 g. of land, with wasilaut and interest rupees 31-13.

The plaintiff stated that her late husband Radharam held 1 k. 17 g. of land, at a jumma of 1-13-6, in turuf Bijecram Sein, a mehal, the property of Government; that he let this land to Doorga Dass, and Ramkinker, former zemindars, who withhold all

rent. Doorga and Ramkinker being dead, plaintiff sues their widows. Anund Mihee for herself and Musst. Oomanee, replied that, previous to his decease, Radharam had sold the tenure with another, in all 4 k., to their late husbands, on 29th Assin 1209, for 36 rupees. She claimed a nonsuit on the ground that witnesses to the kuballa, held by her, had been fraudulently made. Defendant Kuleedoss and other defendants corroborated the statement of Anund Mihee.

The moonsiff considered that the names of defendants' witnesses had not been fraudulently placed among the defendants. He thought the kuballa a forgery, because one condition was that it was to be registered in the zemindar's serishta, which had not been done; though Radharam lived a year after its alleged execution; because the witnesses to it are former proprietors connected with the defendants, not unprejudiced persons, and because plaintiff paid rent for 1211. He decreed against the two principal defendants, (appellants).

The defendants Anund Mihee and Oomanee appealed, repeating the defence.

The plaintiff also appealed, (case No. 261), complaining that the decree was not given against all the defendants, and representing the difficulty of executing it against two women, purdah nisheen.

#### JUDGMENT.

With the consent of the plaintiff, the defendants, whose names are on the kuballa, were summoned as witnesses. The plea of having fraudulently made them defendants, is no longer valid, even if it was so before. I concur with the moonsiff in thinking that little confidence can be placed in the kuballa. The witnesses are too nearly connected with the defendants. No transfer of the tenure has been made in the zemindar's accounts, and from some witnesses examined in this court, it appears that there were frequent disputes about rent between plaintiff and defendants.

As regards the appeal of the plaintiffs, I consider the original defendants, and debtors to plaintiffs, to have been Doorga Dass and Ramkinker; and the decree should issue against all property left by them.

The appeal of the defendants is dismissed. All costs to be paid by appellant.

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THE 4TH JANUARY 1851.

No. 261 of 1850.

The same case as No. 239 of 1850; and decided with it.

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THE 4TH JANUARY 1851.

No. 240 of 1850.

*Regular Appeal from a decision of Mr. L. W. Hutchinson, Moonsiff of Putteeah, dated 23rd March 1850.*

Musst. Anund Mihee and Oomance, (Defendants,) Appellants,  
*versus*

Chundee Churn Ghose, heir of Sreemuttee Omalah, (Plaintiff,) Respondent.

SUIT instituted 3rd May 1849, for possession of 3 k. 10 g. 1 c., nowabad land, with wasilaut and interest rupees 62-8-9.

The circumstances of the case are the same as those of case No. 239; the land being claimed as the property of Radharam, by plaintiff, and as purchased of him by defendants, who refer to the kuballa filed by them in case No. 239.

The moonsiff, considering the kuballa a forgery, decreed the case.

Anund Mihee and Oomance, appealed, referring to case No. 239.

The plaintiff also appealed, (case No. 383,) complaining that the decree could not be executed against two women (purdah nisheen,) and that no wasilaut had been given for waste land.

#### JUDGMENT.

For reasons stated in the case No. 239, this appeal must be dismissed, and execution of decree allowed against all property left by Ramdass and Rankinker. The plaintiff has not shown that any rent is paid for waste land in the pergunnah, nor is such usual in the district. It cannot therefore be allowed appellants to pay all costs.

THE 4TH JANUARY 1851.

No. 383 of 1851.

The same case as No. 240 of 1850, and disposed of with it.

THE 6TH JANUARY 1851.

No. 280 of 1850.

*Regular Appeal from a decision of Moultee Zeenut Oollah, Moonsiff of Nouparah, dated 15th April 1850.*

Bassir Mahomed, Akbar Ali and others, (Plaintiffs,) Appellants,  
*versus*

Mahomed Hossain and others, (Defendants,) Respondents.

SUIT instituted 26th August 1849, for possession of 2 gundahs, 1 cowree, waste land, lakhiraj behalee, with value of dul grass, rupees 12.

The plaintiffs, representatives of Kunoo, (deceased,) stated that the land was lakhiraj, and measured as the property of their father. Defendants cut the grass and ejected plaintiff. The land is dagh No. 487.

The defendants replied that the land is not dagh No. 487, but part of daghs 3756 and 3757, their property.

The moonsiff considered that no proof had been given that the documents, filed by plaintiffs, referred to the land in dispute. He thought plaintiffs might have lost some land by a tank, not correctly measured, and adopted this mode to recover it. He dismissed the suit.

The plaintiffs appealed, repeating their plaint.

#### JUDGMENT.

The point in dispute is where the boundary line between daghs 3756, and 3757, and 487 should be drawn; all 3 daghs or the greater part being swamp. It could be decided only on the spot, and having been referred to arbitration, the parties have filed a solanamah, dated 17th Poos 1212, stipulating that, of the land bounded to the north by the tank Canoo, and road leading to it, and south by the path to Mahomed Hossein's house, and measuring from north to south 10 bans 3 guz, defendant shall have 2 bans  $1\frac{1}{2}$  guz with the ditch, and plaintiffs the remaining 8 bans  $1\frac{1}{2}$  guz. Plaintiffs have paid rupees 2-3, costs in moonsiff's court, and are not to sue for any arrears for the grass. Each party to pay his own costs before the judge, and defendants to be allowed to take water as before.

The order of the moonsiff is annulled, and the case decreed in the terms of the solanamah.

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THE 6TH JANUARY 1851.

No. 289 of 1850.

*Regular Appeal from a decision of Moulvee Abdool Futteh, Moonsiff of Deeang, dated 18th April 1850.*

Rangopaul Ghazur, (Defendant,) Appellant,

*versus*

Buksh Ali, Munsoor Ali and others, (Plaintiffs,) Respondents.

SUIT instituted on the 29th March 1849, for correction of the chittas of survey, and to erase the name of Doolall, and substitute those of plaintiffs, and deduct from the jummaundee of Rangopaul, defendant, k. 12, g. 16, c. 2, of land, rupees 61-15-3.

The plaintiffs stated that they had held, for many years, two tanks not assessed, and registered as waste land. These two tanks, called Budlho and Hurreya, measuring in all, k. 16, 16, 2, were surveyed as daghs 1012 and 1043, nowabad, the property of

plaintiffs, and not being assessed, remained with them. The defendant caused the name of Doolall to be inserted in the chittas, and the tanks included with k. 1, 6, 1, other nowabad land to be settled with himself in 1845. There is no such person as Ramdoolall. The defendant replied that Ramdoolall died at the time of the settlement, and his heirs should have sued, as it is hereditary right. More than twelve years have elapsed since the survey.

The moonsiff decreed for plaintiffs on the ground that defendant declares Ramdoolall and his heirs to be owners of the tanks, and they have not appeared; neither has defendant given their names. The defendant appealed, stating that Hurreya is the name of a Hindoo tribe: that every one who pleases uses the tanks; that plaintiffs having no land, cannot own the tanks.

### JUDGMENT.

The settlement of these two tanks included in a small plot of nowabad land, was made on the 22nd August 1845, with Ramgopaul, the deputy collector having issued notice for Ramdoolall to appear, which he failed to do. The only reason given for making the settlement with defendant is, that he had possession; but the witnesses resident in the village, depose to possession being with the plaintiffs, who allowed all to use the tanks, on payment of a small fee. It is further deposed that defendant himself paid this fee and thus had apparent possession. The only grounds on which the deputy collector made the settlement with defendant, appearing incorrect, and possession of plaintiffs being proved, I dismiss the appeal. All costs to be paid by appellant.

THE 6TH JANUARY 1851.

No. 415 of 1850.

*Regular Appeal from a decision of Moulvee Syed Ahmed, Acting Moonsiff of Deeang, dated 11th June 1850.*

Mahomed Hossein and Motceoolah, (Plaintiffs,) Appellants,

*versus*

Satoo Robecchand *alias* Petoa and others, (Defendants,) Respondents.

SUIT instituted 28th March 1848, for possession of a tank, k. 4, 6, 3, waste land, and erasure from dakchittas, of the names of defendants as occupants, and reversal of the summary order, rupees 64,

The plaintiffs claimed the tank called Moozuffer, situated in Shikimee, turuf Kalakasim, as derived from their maternal uncle, and afterwards claim some right by purchase. They further stated that the defendants have no right, though they caused the

tank to be measured as theirs; and that the deputy collector, on the 15th September 1840, rejected plaintiff's darkhast to correct the chittas, and registered the tank as dagh 3019, in plaintiffs' turuf.

Mahomed Kaloo and other defendants said that the tank was in plaintiffs' purchased turuf. Satoo Robeechand and other defendants said that the owners of turuf Kalakasim never had possession of the tank: that it was dug previous to 1126 M., and that Kalakasim relinquished all right in favor of defendants' ancestors, more than 60 years ago.

The plaintiffs rejoined that Kalakasim, having given the ikrar on plain paper, such could not be accepted as proof.

The moonsiff observed that plaintiffs had filed a kuballa and jacad; but the kuballa showed only 4 k. 5 g. of hasila land in which no tank is included, and that defendants have proved hereditary right as adjudged by the deputy collector. He dismissed the suit.

The plaintiffs appealed, repeating their assertions, and asserting that the jaedad they gave, is for 9 k. 10 hasila, and 4, 6, 3, waste land.

#### JUDGMENT.

It is not very clear whether the plaintiffs claim the tank by hereditary right or by purchase. Of hereditary right, they have tendered no proof, and the kuballa does not appear to include the tank, supposing the party, Buksh Ali, had power to sell it. The jaedad is for the whole of Kalakasim, no mention being made of the tank; and as the deputy collector decided that plaintiff was not the owner of the tank, it was probably not included. The defendants have proved possession many years, and filed an ikrar, dated 1131, when, it would appear, their nowabad talook was included in turuf Kalakasim. By this ikrar the zemindars relinquish all right to the tank and land. The plaintiffs object that this deed is on plain paper, but it was written previous to any stamp regulation having been enacted. The plaintiffs have made out no case to authorize the reversal of the orders of the revenue and survey authorities, I therefore confirm the moonsiff's order, and dismiss the appeal.

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THE 8TH JANUARY 1851.

No. 295 of 1850.

*Regular Appeal from a decision of Mr. L. W. Hutchinson, Moonsiff of Putteeah, dated 20th April 1850.*

Chundee Churn and Puddoolochun, (Defendants,) Appellants,

*versus*

Ramlhurry and other heirs of Poshooram, (Plaintiffs,) Respondents.

Suit instituted 10th August 1848, for recovery of 12, 8, value of property, and a 4 annas share, in the gifts and offerings of juj-mans, and value of duttamah, rupees 276-11-7.

The plaintiffs stated that Kanoo gave to Poshooram, on his marriage with Kanoo's daughter, and to Ramchurn, a 4 annas share in the offerings of the pujmans, by duttamah, dated 28th Sawun 1179. Kanoo then went to Poorie and died there. The heirs left by him, are the appellants in this case. The daughter of Kanoo died, but Poshooram and heirs continued to receive a 4 annas share in the gifts until 1208, and appellants, (defendants), the remaining 12 annas. Sundry pujmans have paid 50 rupees, without giving plaintiffs a share. They sue them and other defendants for 12-8, and the 4 annas share, as first granted by Kanoo. Chundee Churn and Puddoolochun replied that the duttamah was a forgery; that while they were minors, plaintiffs were their servants, and were bound by an ikrar to relinquish the office of village Brahman when defendants came of age. Dhumeeram and other pujmans gave a similar reply.

The moonsiff observed that plaintiffs had proved a duttamah, and the defendants, Chundee Churn and Puddoolochun, the ikrar to relinquish office. He considered the duttamah, for reasons stated, to be genuine, and decreed for plaintiffs.

The defendants appealed, repeating their assertions, and explaining the discrepancies which induced the moonsiff to disallow the ikrar.

#### JUDGMENT.

The moonsiff has only tried the question of the duttamah being genuine or not; but there is another issue, whether, if genuine, it can be enforced. Kanoo was a village purohit, and the plaintiffs obtained either from him or his heirs, a 4 annas share on the gifts of the pujmans. Kanoo could give up a part of his own share if he pleased, but he could not bind the pujmans to give a part of their gifts to plaintiffs, after his death. They were at liberty to give to whom they pleased, and to choose their own purohit.

On the precedent of case No. 762 of 1849, *Sudder Dewanny Adawlut Reports* for 1850, page 296, I annul the order of the moonsiff, and decree the case to the appellants, with all costs.

THE 8TH JANUARY 1851.

No. 417 of 1850.

*Regular Appeal from a decision of Moulree Abdool Jubbar, Moonsiff of Issapore, dated 14th June 1850.*

Futteh Ali, (Plaintiff,) Appellant,

*versus*

Munohur Ali, Zeenut Ali and others, (Defendants,) Respondents.

SUIT instituted 20th April 1849, for recovery of 5 rupees 10 annas, rent and interest illegally collected.



The plaintiff stated that he held 2 kanees of land in the kismut of Rushun Ali, talook Russool Nuggur; that Rushun Ali let his land in 1203 to Dewan Ali, on lease, to whom plaintiff paid 5 rupees, the amount due from him. In 1207-8, the crops having failed, plaintiff resigned his jote; but his property was attached by the defendants, sons of Dewan Ali, for the rent of 1209. Plaintiff paid the rent and released his property, and now sues.

Mahomed Shumel and others, heirs of Rustum Ali, said that their talook had been let to Dewan Ali; that plaintiff was a ryot and had withheld his rent. Munohur Ali and Zeenut Ali, sons of Dewan Ali, said their father took the tenure on lease of Rushun Ali, and that plaintiff being defaulter, they had attached his property for rent of 1209.

The moonsiff dismissed the suit, observing that it had not been instituted within one year, and, under Construction No. 467, could not be entertained.

The plaintiff appealed, repeating his plaint, and asserting that as his property was attached only, and not sold, the Construction did not apply.

#### JUDGMENT.

The first issue is whether the suit is cognizable under Construction No. 467. The plaintiff did not sue for more than one year after his property had been attached, but states that, as it was not sold in consequence of the attachment, he is at liberty to bring the suit at any time within 12 years. Regulation V. of 1812 and Construction No. 467 make no such exception. Attachment only is mentioned. The actual sale of the property is not necessary to bring the suit under Section 17 of the Regulation. I dismiss the appeal.

THE 9TH JANUARY 1851.

No. 218 of 1850.

*Regular Appeal from a decision of Moulee Syed Ahmed, Acting Moon-siff of Sathameeah, dated 9th March 1850.*

Ramdoolall Podar, purchaser, Shamut Ali, and Ayesha Bebee, (Defendants,) Appellants.

*versus*

Musst. Shooa Bebee, Ameerhunisha, and Ali Murdan, (Plaintiffs,) Respondents.

Suit instituted 19th April 1848, for possession of d. 1 k. 2-15 of land, by cancellation of the sale, with mesne profits rupees 290-8.

The plaintiffs, representatives of Mahomed Serferaj, stated that this person held the above land as a talook, which he had purchased in 1183, in turuf Joynarain Ghosaul, at 31 rupees jumma; that Ramdoolall Podar caused k. 12 13-1 to be attached as the property

of Abdool Sobhan, and sold when he himself became the purchaser, and has held possession since 1202. Mahomed Surferaj complained to the principal sudder ameen, but was referred to a regular suit. He died in 1206, leaving the plaintiffs his heirs.

Ramdoolall Podar stated that the talook was attached in execution of a decree, against Abdool Sobhan, and sold on 3rd Falgoun 1201, when he defendant purchased it; that the kuballas exhibited by Mahomed Surferaj being forged, his claim was rejected by the principal sudder ameen, against whose order he did not appeal; that Abdool Sobhan managed the land, granting leases and suing ryots, years after the nominal sale to Mahomed Surferaj.

Kala Ghazee and others, ryots, corroborated plaintiffs' statement.

Ayesha Bebee denied that the land she held was in the talook of Abdool Sobhan. She paid the zemindar.

Shanut Ali replied to the same effect. The moonsiff decreed for the plaintiffs, observing that there was a difference between the jumma specified in the pottah of the talook, and that in the sale advertisement. That possession of Surferaj is proved, and that Ayesha and Shanut have given no proofs to substantiate their reply. He gave wasilaut after deducting the zemindar's jumma.

The defendants appealed, explaining the difference in the jumma arising from a previous sale of 4 kancees by Abdool Sobhan, denying that Ayesha or Shanut Ali held under the talookdar, and repeating their assertions.

### JUDGMENT.

The suit was brought to set aside a sale made by order of the court in execution of a decree against Abdool Sobhan, whose talook, the land sued for, was attached in May 1838, and sold. Mahomed Surferaj objected at the time, but his objections were overruled. He remained silent till his death in 1206, and 4 years after that event, his heirs bring this suit. The proof adduced by plaintiffs is a receipt for 2 k. 10 g. of land, dated 6th Jyete 1183, sundry dakhillas and witnesses to possession; while defendants have shown that Abdool Sobhan retained the management of the talook many years after the alleged purchase by Mahomed Surferaj. So late as 1838 he sued a ryot under Regulation VII. of 1799. Mahomed Surferaj's apparent possession is accounted for by defendants, by his having been tchseeldar during the absence, on a pilgrimage, of Abdool Sobhan.

In this court, when called on to exhibit their kuballa or other document under which they held possession, plaintiffs said it had been filed in another misil, but have been unable to point out which.

The plaintiffs have not shown what title they have to the land, or whether Mahomed Surferaj ever had possession in his own right. The receipt is for a small area, and the dakhillas do not show the

rent to have been paid regularly by him. The delay in bringing the suit is wholly unexplained.

I consider the evidence not sufficient to warrant interference with a sale made by the court ten years back, and unchallenged for that period in a regular suit, and shall therefore annul the moonsiff's order, and decree the case to the appellants, with all costs.

THE 9TH JANUARY 1851.

No. 635 of 1850.

*Regular Appeal from a decision of Moulree Ameenuddeen, Moonsiff of Deoang, dated 26th September 1850.*

Gokul Chunder, sale Commissioner, (Defendant,) Appellant,

*versus*

Moonshee, (Plaintiff,) and Gungaram, (Defendant,) Respondent.

Suit instituted 8th January 1850, for illegal distraint of property and cancellation of the commissioner's roceedad, with damages rupees 21.

The plaintiff stated that he held 5 gundahs of land at a jumma of 12 annas, in etnan Munsoor Ali, to whose wife he paid rent: that under the defendant Gungaram, he held no land whatever; but that this person had distrained on him for an alleged balance of rupees 6-12. That the property was sold by the commissioner for rupees 10-8, of which Gungaram took rupees 7-12-9, and the commissioner kept the balance of rupees 2-11-3, falsely stating that he had repaid it to plaintiff.

Gungaram Ghazur, defendant, denied that he had caused the plaintiff's property to be attached and sold. His, Gungaram's, name had been used by Akbur Ali, his partner.

Jan Ali, brother to Akbur Ali, deceased, said his brother went with Gungaram to attach the property, but that he, Jan Ali, has no further concern in the suit.

Gokul Chunder, sale commissioner, denied there was any irregularity on his part. He had paid the money to Gungaram, and the balance to plaintiff, and sent the receipts to the collector.

The moonsiff considered it proved that plaintiff held no land under defendants in 1209, who had therefore attached plaintiff's property illegally. As Jan Ali had possession of Akbur Ali's share, he gave damages against him also. He observed that plaintiff not being connected with defendant, cannot recover damages. He decreed for rupees 2-11-3, against the sale commissioner, and the balance against the other defendants.

The defendant Gokul Chunder, sale commissioner, appealed, repeating his defence, and stating that if he had not paid the money, plaintiff and defendant would have complained to the collector.

Jan Ali also appealed, (case No. 636,) asserting that Gungaram attached the property, and that he, Jan Ali, is not heir to Akbur Ali.

### JUDGMENT.

The moonsiff has not sufficiently investigated this case. The rooeedad of the commissioner shows the distraint to have been made at the instance of Gungaram, and it has been shown that both he and his partner, Akbur Ali, were present. Jan Ali is stated to have been there, but as a spectator only. He is not heir to Akbur Ali, and I do not see how he can be held responsible. The moonsiff should have called on the collector to send him the case with which the receipts of plaintiff and defendant are said to be filed, before holding the sale commissioner responsible for a balance. If the sale commissioner has acted as stated by the moonsiff, the collector should be immediately informed of his conduct. The moonsiff has not given damages, because Gungaram had no right whatever to distrain on plaintiff, a reason which cannot be admitted. Had the wrong to plaintiff been less, the moonsiff would, as appears by his own order, have given damages.

I annul the order in this case, and remand it for re-trial. Value of stamp to be returned.

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THE 9TH JANUARY 1851.

No. 636 of 1850.

Jan Ali, (Appellant.)

THE same case as the foregoing (No. 635) and remanded with it. Value of stamp to be returned.

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THE 11TH JANUARY 1851.

No. 419 of 1850.

*Regular Appeal from a decision of Moulree Abdool Jubbur, Moonsiff of Issapore, dated 7th June 1850.*

Doorga Churn Biswas, (Defendant,) Appellant,

*versus*

Jan Beebee, (Plaintiff,) Respondent.

SUIT instituted 30th July 1849, for recovery of rupees 10-12, rent unduly collected.

The plaintiff stated that her late husband, Buddha Ghazee, held 5 k. 10 g. of land—at 11, 14, in the talook of Jan Ali and Suddha Ghazee; that the parties let the talook, on lease, to Mahomed Waris for 4 years, to whom plaintiff's husband was compelled to pay 50-8 for the 4 years while 47-8 only were due. The tehseeldars, Door-gachurn and Mittunjye, on behalf of the owners of the turuf, also

collected of plaintiff's husband 7-12 on account of 1207 and 1208, making in all 58-4 paid, instead of 47-8. Plaintiff sues to recover the balance.

Doorga Churn Biswas, defendant, admitted having collected the amount. He said the talook of Jan Ali paid Sicca rupees 20-7, and other parties paid the balance. Booddha Ghazee paid 7 rupees 12 annas in 1207 and 1208 voluntarily.

The moonsiff observed that the plaintiff had not clearly shown the accounts between her late husband and Waris, who had received 28-8 annas, hal and bukeeya demand, in 1210. He dismissed the case as regarded him. He considered that Doorga Churn had shown no authority to collect from plaintiff or her husband, and that the sum received by him, not having been credited as rent, might be recovered, although more than one year had elapsed. He gave plaintiff 7-12 against Doorga Churn. Doorga Churn Biswas appealed, stating he had been authorized to collect by the talookdars, and that plaintiff's husband had paid voluntarily.

#### JUDGMENT.

The plaintiff has proved the payment to the defendants, but failed to show that Mahomed Waris took more than was due to him. Doorga Churn has asserted that he had authority to collect, but has exhibited none. His answer is confused, and it appears from the evidence that, when a talookdar defaults, his talook is by village custom held khas for a time by the owners of the turuff. This practice is illegal. The ryots should pay to their own immediate landlord or such person as he may authorize, due notice being given. The defendant is clearly responsible for the amount he has received as for a debt. I confirm the moonsiff's order, and dismiss the appeal.

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THE 15TH JANUARY 1851.

No. 420 of 1850.

*Regular Appeal from a decision of Moulvee Abdool Futteh, Moonsiff of Decong, dated 14th June 1850.*

Mahomed Shuffec, Danish and others, (Defendants,) Appellants,  
*versus*

Mahomed Hosein, (Plaintiff,) Respondent.

SUIT instituted 16th February 1849, for 1 k. 15 g. being 2 tanks, correction of the survey chittas, removal of a hut, and possession of one of the above tanks, with value of fish rupees 31-8.

The plaintiff stated that he was owner of 2 tanks, measured as daghs 548 and 551, one in turuff Budderooddeen, and one sewae jumma, one tank measuring 1 k. 5 g., by hereditary right, and one measuring 10 g., by virtue of a decree of court. In copying the chittas, dagh 548 was recorded as 13 g. 2, talook Mahomed Kamil

instead of 10 gs. in that talook, and instead of 1 k. 5 g. 8 g. in talook Cashceanth Doorga Churn. The defendants ejected plaintiff from one tank by taking fish, cutting trees, and erecting a hut; but plaintiff has still possession of the tank dagh 551.

The defendants replied that they and their father had held the tank 40 years, and had twice in that period cleared it out. That a complaint instituted against them, in the foudjaree, had been dismissed.

The moonsiff observed that a decree of court, the deposition of witnesses, and the ameen's report, showed the tank dagh 551 to be plaintiff's; who had however not proved his right to the tank dagh 548; that the 2 tanks are adjacent, and the bund separating them is shown by the ameen's chittas, when giving possession under the former decree, to be the property of plaintiff. He decreed for him for the shed, and for the land included in ameen's chittas 1 to 5.

The defendants appealed, repeating their assertions, and stating that their cow-shed stood at a short distance from the tank of plaintiff.

#### JUDGMENT.

The proof adduced by plaintiff is a decree giving him the tank, dagh 551, and the chittas of the ameen acting under the court's order, and dated 23rd Bysakh 1197, giving him possession of the tank, and bank round it. On this bank a hut appears to have been built by defendants, who, though they may own their tank, have no right to the bund, separating it from the other belonging to plaintiff. Their own cow-shed may be at a distance, but the award is for the removal of one built on land decreed to plaintiff in a former suit, viz., ameen's daghs 1 to 5.

The order of the moonsiff appears unobjectionable, and is therefore confirmed, and the appeal dismissed.

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THE 23RD JANUARY 1851.

No. 16 of 1851.

*Regular Appeal from a decision of Moonshee Fuzlool Rohoman,  
Acting Moonsiff of Putteeah, dated 17th December 1850.*

Ayesha Bebec and Affeea Bebec, (Plaintiffs,) Appellants,

*versus*

Dewan Ali, Kumur Ali, Aman Ali and others, (Defendants,) Respondents.

SUIT instituted 18th July 1849, to cancel the summary orders, dated 22nd July 1848, 7 rupees

The plaintiffs stated, that they held a talook, Bakur Prom, in the zemindaree of Moulvee Busheeroollah. That Mohun Burrooa having resigned his jumma ryuttee, consisting of daghs 1880 and other's, Dewan Ali took the land in 1209, but refused payment of

rent due. Plaintiffs attached his property, but on trial, in consequence of a suit being then pending before the principal sudder ameen, the deputy collector referred both parties to the civil court. The plaintiffs afterwards presented a second petition to correct the numbers of the daghs.

Hasun Ali, defendant, admitted the truth of plaintiffs' statement.

Dewan Ali denied he had given a kubooleut to plaintiffs, or held land under them.

Kumur Ali and Aman Ali said the land cultivated by Dewan Ali was in their talook, and pointed out discrepancies in plaintiffs' statement.

Mohun Burrooa said he never held land under plaintiffs, nor resigned any jote

Busheeroollah referred to the case No. 22 of 1850, (see Mofussil Decisions July 1850, page 89,) and declared the land to be Kumur Ali's.

The moonsiff observed that neither before him, nor the deputy collector, had plaintiffs proved that Dewan Ali had possession of the land; that the kubooleut had been altered, the name of one witness had been apparently interpolated, and all the witnesses had not been examined: those who had been, differed in their statement. Mohun Burrooa denied he had resigned his jote, and plaintiffs had not proved that he had. The moonsiff therefore dismissed the suit.

The plaintiffs appealed, in a petition not clearly written, complaining that no ameen had been sent, and attempting to explain the discrepancies and alterations noticed by the moonsiff.

#### JUDGMENT.

The argument used by the vakeel was that plaintiffs having been cast in the suit decided in July last, and held liable for wasilaut, should have power to collect arrears from the ryots. The principle must be admitted; and the only point for consideration is whether, on the kubooleut which Dewan Ali denies to be his, the case can be decreed to plaintiffs. I consider that the alterations on the face of the kubooleut, the apparent interpolation of one witness's name, the doubtful statement of the two witnesses examined; while Mohun Burrooa denies he resigned the land which plaintiffs say Dewan Ali occupied, are fatal objections. I therefore confirm the moonsiff's order, and dismiss the appeal.

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THE 23RD JANUARY 1851.

No. 229 of 1850.

*Regular Appeal from a decision of Mouljee Hadee Ali, Moonsiff of  
Kungunneeah, dated 21st April 1850.*

Ameerchand, (Defendant,) Appellant,

*versus*

Put Ali, (Plaintiff,) Respondent.

Suit instituted 19th February 1849, for recovery of rupees 150, value of 3000 bundles of grass trodden down and destroyed.

The plaintiff stated that she held 11 d. 1 k. of land in mouza Rackhalee, producing sunn grass, about 2000 bundles every year; that in 1208 and 1209 the defendant turned his cattle into the grass; and that instead of 2000, plaintiff only obtained in one year 400, and in another 500 bundles.

The defendant denied that plaintiff had any property in mouza Rackhalee, and stated that her property was mere jungle and only 3 d. 7 k.; and that the grass had been destroyed by other cattle as well as by that of defendant.

The moonsiff observed that the evidence of the witnesses, and the ameen's report showed that the grass had been destroyed. Although other cattle had trodden down part of the grass, this did not justify the defendant. He decrees for rupees 105, value of 2100 bundles of sunn grass.

The defendant appealed, stating that, within the boundaries described by plaintiff, there are only 3 d. 7 k. not the area laid in the plaint; that one droon of land only produces about 80 bundles of sunn grass; that he has an old quarrel with plaintiff's witnesses; and that his were not the only cattle which destroyed the grass.

#### JUDGMENT.

With the consent of both parties, an ameen was deputed from this court to report what land was in possession of the plaintiff, (respondent.) The ameen's report agrees with that of the other ameen, and the evidence in the case, which show that about 2100 bundles of grass were destroyed by the cattle of defendant. It is asserted that other cattle, besides defendants, trespassed on the land; but this has not been proved; neither has the alleged quarrels with plaintiff's witnesses. The whole evidence shows the loss sustained by plaintiff to have been considerable. I therefore confirm the moonsiff's order, and dismiss the appeal. The balance still due to be paid to the ameen.





## ZILLAH CUTTACK.

PRESENT : M. S. GILMORE, Esq., JUDGE.

THE 3RD JANUARY 1851.

No. 47 of 1850.

*Appeal from a decision of Moonshee Gureeboolla, Moonsiff of Balasore,  
dated 18th June 1850.*

Seeb Roat, (Defendant,) Appellant,

*versus*

Chowdry Sreedhur Mahapatur, (Plaintiff,) Respondent.

CLAIM, rupees 24-10-1, principal and interest of a bond, dated 3rd Kartick 1257 U.

The plaintiff states that on the date on which the bond was written, the defendant borrowed from him the sum of rupees 24, promising to re-pay the same in the month of Aughun : but he had failed to do so, and therefore he sued him for its recovery.

The defendant denied borrowing any money from the plaintiff on the date of the bond, and stated that Chitrasend Mahapatur, the plaintiff's father-in-law, who was telhseeldar of Dhurrera on the part of Chowdry Gungadhur Pahraj, carried on a trade in dhan, and was in the habit of taking dhan from the ryots in lieu of khazanna; and having exacted grain from them in excess of the current rates, and charged with interest on instalments not paid on demand, and other illegal expenses, and taken money from them without granting receipts for the same, the defendant and other ryots complained to their zemindar Gungadhur Pahraj, who told them to adduce proof of their statements, but died before the matter had been investigated; and Chittrasend Mahapatur, then complained to his son Sheebnarain Pahraj, that they the ryots did not pay their rent, and he placed peadahs over them, viz., defendant, and Sreebunt Jenna, and Debee Biswal, and told them that as khazanna was due, they must execute tummus-sookhs for the sum of rupees 93, in the name of Sreedhur Mahapatur; and on their objecting, Chittrasend Mahapatur compelled them to execute them; and when they were going to complain to the magistrate, Sheebnarain Pahraj, promised to return the tummus-sookhs to them, and dissuaded them from doing so : all of which he was prepared to establish by evidence.

The moonsiff, notwithstanding the plaintiff's witnesses had given contradictory evidence touching the date of the bond, and the plain-

tiff had not caused the attendance of the person who wrote it, and the defendant's witnesses had corroborated his statement respecting his having been forced to execute a bond, which was attested by Manoo Pater and Sutroo Jenna, in addition to the persons whose names appeared in the bond filed by the plaintiffs, held that the contradictory evidence of the plaintiff's witnesses was attributable to forgetfulness, and decreed the claim with interest.

The defendant, in appeal, objected that the plaintiff's witnesses had deposed that the bond was executed in Assin, whereas the one filed by the plaintiff was dated the 2nd Kartick 1257; and pointed out that the stamp paper, on which the bond was written, was purchased on the same date as the bond itself, by Kirpasindoo Mhaintee at Balasore, which is 6 or 7 cos distant from Dhurrera, where it was said to have been written; and consequently it could not have been executed, as stated by the plaintiff's witnesses, at 1 puher or 5 ghurries of that day, &c.

#### JUDGMENT.

It appears that, notwithstanding the bond is dated the 3rd of Kartick 1257, out of the three witnesses to the bond, one deposed that it was written on the 3rd of Assin, another that it was written at the end of Assin, and the third that he did not know whether it was written at the end of Assin, or the beginning of Kartick; and as the stamp paper on which it is written was only sold on the 18th October 1849, corresponding with the 3rd Kartick, at Balasore, which is 6 or 7 cos from mouza Dhurrera, where it is alleged to have been written, it is quite incredible that it could, as is stated by the witnesses, have been written at 1 puher or 5 ghurries on that day. I consequently entertain no doubt of the truth of the statements made by the defendant's witnesses, to the effect that the bond, which the defendant was forced to execute, was assigned by other witnesses than those whose names appear in the bond filed by the plaintiff, and I believe the present bond has been substituted for that bond; because the plaintiff could not prevail on the other witnesses to give evidence in his favor. But, however, this may be, the contradictory evidence of the witnesses touching the date of the bond filed, is quite fatal to the plaintiff's claim. And it is hereby ordered, that the appeal be decreed, and that the decision of the moonsiff reversed. The respondent will pay the appellant's costs in both courts, with interest to the date of payment.

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THE 3RD JANUARY 1851.

No. 48 of 1850.

*Appeal from the decision of Moonshee Gureeboolla, Moonsiff of Balasore, dated 18th June 1850.*

Sribunt Jenna, (Defendant,) Appellant,

*versus*

Chowdry Sreedhur Mahapatur, (Plaintiff,) Respondent.

CLAIM, rupees 24-10-1, principal and interest of a bond, dated 3rd Kartick 1257 U.

The circumstances attending this case are exactly the same as those of the preceding one. The same witnesses were called on to prove the bond, and they made the same contradictory statements regarding the date of the bond, and the stamp paper on which it is written was also purchased at Balasore, on the 3rd Kartick 1257, the date of the bond. It is therefore ordered, for the reasons detailed in my decision in case No. 47, copy of which will be herewith filed, that the appeal be decreed, and the decision of the moonsiff reversed.

The respondent will pay appellant's expenses in both courts, with interest.

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THE 7TH JANUARY 1851.

No. 49 of 1850. . .

*Appeal from the decision of Moonshee Gureeboolla, Moonsiff of Balasore, dated 18th June 1850.*

Debee Biswal, (Defendant,) Appellant,

*versus*

Chowdhry Sreedhur Mahapatur, (Plaintiff,) Respondent.

CLAIM, rupees 46-2-5, principal and interest of a bond, dated 3rd Kartick 1257 U.

This bond is said to have been executed at the same time as the bonds filed in the two preceding cases, and the circumstances attending it are the same with one exception, viz., that the stamp paper on which the bond is written was purchased on the 11th May 1849, the same being five months before the bond is said to have been executed; and the moonsiff's decision is based on the same grounds as those recorded in his decree in case No. 47.

#### JUDGMENT.

Although the plaintiff's witnesses depose to the execution of the bond filed by the plaintiff, and the defendant as well as his witnesses state that the defendant was forcibly made to execute a bond, I can place no reliance whatever on the evidence of the plaintiff's witnesses; and for the following reasons it is not only clear that the

defendant received no money from the plaintiff, but that the bond filed by the latter, has been substituted for the one which the defendant and his witnesses state he was forced to execute: first, the bond filed by the plaintiff is dated the 3rd Kartick 1257, and out of the three witnesses adduced to prove its execution, one states that it was written on the 3rd or 4th of Assin, another that it was written at the end of Assin, or the end of Kartick, and the third that it was written at the end of Assin, or on the 2nd or 3rd of Kartick: and secondly, the witnesses on the part of the plaintiff state that the bond was executed at the plaintiff's house at Dhurrera, in the absence of Chetrasend Mahapatur, and that it was written by a person of the Mhaintee class, who resided towards the south, whose name they did not know; whereas the defendant's witnesses depose that the plaintiff has no house or place of business at Dhurrera, and that he was not present when the defendant executed the bond referred to by them; and they further state that the said bond was written in Assin by Russick Mahapatur, the nephew of Chetrasend Mahapatur, and that it was attested by Naboo Singh, Hurree Jenna, Sutroo Jenna, and Manoo Pater; and such I believe to have been really the case; otherwise the plaintiff would not have failed to cause the attendance of the person who wrote the bond. And it is not at all probable that, when the place where the bond was written, adjoined the zemindar's cutcherry, and there were plenty of persons who could write to be found, to say nothing of the plaintiff being able to write himself, the plaintiff would have employed a stranger, an inhabitant of a distant part of the country, to write it. It is also quite clear, that, if the bond filed by the plaintiff was a genuine one, and was written as alleged by Sonatun Mhaintee, the plaintiff, after citing him as a witness, would have caused his attendance, instead of stating that he was unable to do so as he was a stranger, and he was ignorant of his place of residence. Therefore, considering the plea of forgetfulness adduced by the moonsiff, in excuse for the contradictory evidence given by the witnesses touching the date of the bond, altogether futile. It is ordered, that the appeal be decreed, and the decision of the moonsiff reversed. The respondent will pay his own, and the appellant's expenses in both courts.

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THE 9TH JANUARY 1851.

No. 50 of 1850.

*Appeal from a decision of Moonshee Gureeboollah, Moonsiff of Balasore, dated 20th June 1850.*

Rugoonath Samul, Bhurut Naik, Lukhun Prodhan, and Kanoo Jenna, (Defendants,) Appellants,

*versus*

Jugernath Mahapatur, (Plaintiff,) Respondent.

Sobotra Monee Dey, mozahim, absent in appeal.

CLAIM, rupees 262-1-4, principal and interest of a bond, dated 7th Sing (Bhadoon) 1256.

The plaint simply sets forth that the four defendants borrowed from him the sum of rupees 250, and executed the bond on the above date, promising to repay it with interest before the end of Aughun.

The defendants denied borrowing the money or executing the bond, and stated the following to be the cause of the false suit, being instituted against them, viz. : Chetrasend Mahapatur, the plaintiff's father, was tehseeldar on the part of Chowdry Gungadhur Pahraj, who died on the 16th Bhadoon 1256, and a dispute arose among his sons regarding the right of succession to his estate, and Chetrasend Mahapatur summoned the defendants before Sheebnarain Pahraj, the eldest son of the deceased, and told them to present a petition to the collector, stating that Gungadhur Pahraj, four years before his death, had made over the whole of his property to Sheebnarain Pahraj, and that they had paid their rents to him during that time; and on their refusing to do so, Chetrasend Mahapatur, at the direction of Sheebnarain Pahraj, forged the tummusookh under which his son now sued in their names.

Musst. Sobotra Monee Dey, the widow of Gungadhur Pahraj, filed a petition of objection on the part of her three minor sons, corroborating the statement of the defendants.

The moonsiff held that the borrowing of the money and the execution of the bond on the part of the four defendants, was proved by the evidence of three of the witnesses to the bond, and that although the defendant's witnesses had in a manner corroborated their statement, their evidence was not to be relied on, as the defendant's themselves stated that Chetrasend Mahapatur told them to present a false petition to the collector, and their witnesses stated that he told them to give false evidence, and he decreed the plaintiff's claim.

In appeal, the defendants argued that there was nothing surprising in the plaintiff's witnesses giving evidence regarding the execution of the bond, as they were the ryots of Sheebnarain Pahraj, and Chetrasend Mahapatur was his tehseeldar: but if the bond have been really executed by them, the stamp paper on which it is

written, would not have been purchased by one Gobind Sunkooah, four months before the bond was executed; and if their (defendants') statement was not correct, their witnesses, who are also ryots of Sheebnarain Pahraj, would not have deposed in their favor.

The respondent, in reply, denied that Sheebnarain Pahraj and Chetrasend Mahapatur were in any way connected with the bond.

#### JUDGMENT.

Although the moonsiff states that the execution of the bond by the defendants is proved by the plaintiff's witnesses, and that the evidence adduced by the defendants, is not to be believed; because the defendants recorded in their jawab, that Sheebnarain Pahraj told them to file a false petition, and their witnesses deposed that he told them to give false evidence, to the effect that Gungadhur Pahraj, his father, had made over the whole of his property to him the said Sheebnarain Pahraj, I consider such a reason altogether insufficient for discrediting their testimony: for the filing of a false petition or giving false evidence touching any fraudulent matter, amounts to the same thing; and I entirely discredit the plaintiff's claim, as well as the evidence adduced by him in support of it: for neither is it set forth in the plaint, nor were any of the plaintiff's witnesses able to state on what account the large sum claimed was borrowed; and it is exceedingly improbable that four persons unconnected in trade, or by family, with one another, would borrow the large sum of rupees 250 under one bond, and thereby bind themselves individually responsible for the whole of it. And not only are the witnesses all ignorant people, who could neither read nor write, but they could not identify the bond, and their evidence is in all other respects unsatisfactory and untrustworthy. It is, moreover, notorious that Sheebnarain Pahraj has been exerting every means in his power to prevent his younger brothers from obtaining any share in their father's property, and several cases have in consequence been instituted in the foudarry and appealed to the sessions court; and it is to be inferred therefrom, that the defendants' statement is correct. It is therefore ordered, that the appeal be decreed, and that the decision of the moonsiff reversed. The respondent will pay his own and the appellants' costs in both courts, with interest to the date of payment.

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THE 9TH JANUARY 1851.

No. 63 of 1850.

*Appeal from a decision of Mahomed Arshud, Moonsiff of Kendraparah,  
dated 21st August 1850.*

Basoo Rut and Nurhurry Teeharry, (Defendants,) Appellants,

*versus*

Jugbundoo Punda, (Plaintiff,) Respondent.

Arut Teeharry, Defendant, absent in Appeal.

CLAIM, rupees 30-3-6-10 krants, principal and interest of a *rahuntummussookh*, dated 7th Kunia (Assin) 1256 U.

The plaintiff stated that defendant Basoo Rut borrowed from him the sum of 27 rupees, on the 7th Assin 1256, and mortgaged as security for its repayment with interest in three months, 1 beegah, 1 goont, 1 biswas of resumed *lahhiraj* land, which he had acquired from Nuruttun Teeharry; but he subsequently made a fictitious sale of the same land to Arut Teeharry, and executed a *kuballa* in the name of his son Nurhurry Teeharry; and he therefore sued them along with the said Basoo Rut, as his mortgage was in no way affected by such sale.

Arut Teeharry denied the plaintiff's claim, and stated that Nurhurry Teeharry, who had purchased the land from Basoo Rut was in possession.

Basoo Rut denied either borrowing the money or mortgaging the land to the plaintiff, and stated that the land in dispute was given to him by Nuruttun Teeharry, who made over all the rest of his property to Nurhurry, and a dispute having taken place between them about the said land, he, Basoo Rut, on 5th Bhadoon 1255, executed a *kurarnamah*, promising to sell the land to Nurhurry Teeharry for the sum of rupees 12-8-0, of which he received rupees 3 at the time, and afterwards got rupees 9-8 at Cuttack, and executed the *kuballa*, which he caused to be registered, and gave Nurhurry possession of the land. He also stated that if he had mortgaged the land to the plaintiff, he would have made over to him the *pooner dan dustaviz* by which Nuruttun Teeharry conveyed the land to him.

Nurhurry Teeharry answered to the same effect as Basoo Rut.

The plaintiff, in his reply to Basoo Rut and other defendants, pleaded that if Basoo Rut had executed any *kurarnamah* on the 5th Bhadoon 1255, as he now alleges he did, he would have mentioned the circumstance in his answer, filed in the first suit No. 69 of 1849, instituted by him, the plaintiff.

The moonsiff held that the borrowing of the money, and the execution of the *rahuntummussookh* on the part of Basoo Rut was proved by three of the witnesses to the bond, and as the defendants had failed to produce the *kurarnamah* and *kuballa*, though ordered to produce their proofs on the 9th of April and 20th June, since when



a long time had elapsed, he decreed the plaintiff's claim, with interest, against Basoo Rut and Nurhurry Rut, and ordered them to pay their own and the plaintiff's costs. Arut Teeharry was released, and his expenses made payable by the plaintiff.

### JUDGMENT.

Although the appellants state that they did not file their proofs or cause the attendance of their witnesses before the lower court, because the moonsiff directed the parties to settle their dispute by arbitration, and they have presented a petition, bearing date 7th June, before this court, attested by their own and the plaintiff's vakeels in support of their assertion, I find on referring to the proceedings of the lower court, that the moonsiff on the 20th June, or 13 days after the above petition is dated, directed the vakeels of both parties to file their proofs in two days; and that order is countersigned by the said vakeels. It is therefore evident that if it was the intention of the parties, on the 7th June, to adjust their dispute by arbitration, they had abandoned it on the 20th; otherwise the moonsiff would not have passed the order referred to, and the vakeels would not have signed it; and as the case was not disposed of until two months after that order was passed, the appellants had ample time to file their proofs; but they neglected to do so, and their present plea is inadmissible: and as the plaintiff's witnesses have deposed to the execution of the bond by the defendant Basoo Rut, I see no reason to interfere with "the moonsiff's" decision, which is hereby affirmed, and the appeal dismissed, without serving notice on the respondent.

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THE 22ND JANUARY 1851.

No. 68 of 1850.

*Appeal from a decision of Sheeb Pershud Singh, Moonsiff of Cuttack, dated 3rd September 1850.*

W. Underwood and Nundlal Neogee, (Defendants,) Appellants,

*versus*

James Kuller, (Plaintiff,) Respondent.

THIS suit was instituted to cancel the auction purchase of a bungalow on the part of Underwood, on the 23rd February 1849, and the resale of it by him to Nundlal Neogee, on the 21st March following. Suit laid at rupees 284, viz. rupees 250, the value of the bungalow, and rupees 34 wasilaut.

The plaintiff stated that the bungalow in dispute belonged to the estate of the late Mr. McKoy, who had appointed him his executor; and that he, acting under the Court of Wards, appointed Underwood to sell the property of the deceased by auction; and he, unknown to him, the plaintiff, entered his own name in the lot sale as the purchaser of the bungalow, for the sum of rupees 57, though no actual

sale of it had taken place; and on his remonstrating with Underwood against the alleged purchase, he acknowledged that it had not been sold, and drew his pen through his name in cancelment of the transaction; but on the 21st March he sold the bungalow to Nundlal Neogee, and he in consequence sued to set aside the sale.

Underwood stated that he put up the bungalow for sale with the other effects of the deceased Mr. McKoy; and as no one else would bid for it, he bought it himself and entered his name in the lot sale as the purchaser: and if plaintiff had disapproved of his doing so, he should have stayed the sale at the time. He further stated that the plaintiff had altered the sale papers.

Nundlal Neogee maintained that the purchase on the part of Underwood, who sold the bungalow to him, was a genuine one, and stated that the plaintiff had instituted the suit against him, because he had refused to re-sell it to him.

The moonsiff decreed the bungalow, with wasilaut from the date of the institution of the suit, in favor of the plaintiff, on the grounds that the bungalow had not been paid for by the defendant Underwood, and his witnesses had not proved that the sale had been confirmed by the plaintiff.

In appeal, the defendants state that Underwood had several times tendered the money for the bungalow to the collector, by whose order the sale took place; but he declined to receive it, in consequence of the the dispute existing between the plaintiff and himself regarding the sale.

#### JUDGMENT.

It appears from the lot sale papers that, as stated by the plaintiff, and defendant, the bungalow in dispute was first entered as having been sold for the sum of rupees 57, to Underwood; the letter U having been written in the column for the names of the purchasers, and afterwards scratched out by drawing a pen through it; but by whom this has been done is not proved. However, as Underwood was the auctioneer on the part of the collector, or the plaintiff acting under him as executor, I consider that the sanction of the plaintiff was necessary to the confirmation of the sale, and this the defendant does not appear to have obtained. I therefore see no cause to interfere with the decision of the moonsiff, which is hereby affirmed, and the appeal dismissed, without serving notice on the respondent.

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THE 22ND JANUARY 1851.

No. 64 of 1850.

*Appeal from a decision of Mohesh Chunder Roy, Moonsiff of Dhamnugger, dated 13th August 1850.*

Lutchmun Singh, (Defendant,) Appellant,

*versus*

Narain Mahapatur, (Plaintiff,) Respondent.

Khuttoo Singh, Defendant, and Anunt Das, mozahim, absent in appeal.

CLAIM, possession on a 3 annas, 15 gundahs, 1 cowrie, 1 krant share of mouza Madhpore, pergunnah Burooah, under a deed of sale, dated 19th Jyete 1255 U., and the cancelment of the deed of sale, dated 8th Chyete 1256 U., in favor of Lutchmun Singh, and the insertion of the plaintiff's name, as the proprietor of the said share, in lieu of that of Damoodur Singh. Suit laid at rupes 59-4-0-15.

#### REMARKS.

In this case, it appears that the plaintiff neither filed the deed of sale, the cause of action, nor adduced a single witness to prove his claim; and that the moonsiff decreed his claim simply on the grounds of his decision in suit No. 15 of 1849, instituted by Kheturbassee Sahoo, plaintiff, *versus* Kuttoo Singh and Damoodur Singh, defendants, in which the present plaintiff was mozahim, notwithstanding the plaintiff has now sued to cancel the *kuballa* executed by Damoodur Singh and Kuttoo Singh, in favor of Lutchmun Singh, who was in no way a party to the former suit; and his proceedings are in consequence illegal. It is, therefore, ordered, without entering into the merits of the case, that the decision of the lower court be cancelled, and that the case be remanded to the moonsiff, with orders to restore it to its former place on his file, and re-issue notices to the parties to adduce whatever evidence and proofs they may possess in support of their respective claims, and investigate the case *de novo*. The moonsiff will at the same time be informed, that, although he is not restricted from admitting evidence recorded in a former case in support of the plaintiff's claim, he should have required the plaintiff to file copies of the necessary evidence and papers with the case under investigation; and he should not, under any circumstance, have decreed the plaintiff's claim, in the absence of the deed of sale. The amount of stamp duty will be refunded as usual.

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THN 22ND JANUARY 1851.

No. 65 of 1850.

*Appeal from a decision of Mohesh Chunder Roy, Moonsiff of Dhamnugur, dated 13th August 1850.*

Damoodur Singh, (Defendant,) Appellant,

*versus*

Narain Mahapatur, (Plaintiff,) Respondent.

THE appellant, in this case, was co-defendant with the appellant in case No. 64, just decided in the original suit before the lower court; and as it has been remanded to the moonsiff for re-investigation, no further orders are necessary in the present instance, than that the appeal be struck off the file. The amount of stamp duty will be refunded as usual.

THE 23RD JANUARY 1851.

No. 74 of 1850.

*Appeal from a decision of Gourbullub Ghose, Acting Moonsiff of Poorie, dated 14th September 1850.*

Casseenath Teeharry, (Plaintiff,) Appellant,

*versus*

Rutnee Maharee, (Defendant,) Respondent.

CLAIM, rupees 61-11-10-1 krant, principal and interest of a tumussookh, dated 5th of Assin, or Bhadoon 1256-89 Unk.

The plaintiff stated that the defendant, on the date of the bond, borrowed from him the sum of rupees 60, promising to repay it by the day of *poornuma* in Kartick, but had failed to do so; and he had in consequence instituted the present suit for its recovery.

The defendant denied ever borrowing any money or executing any bond in favor of the plaintiff, and stated that he had been instigated by his master Damoodur Kur, with whom she had lived for seven years, and who had recently quarrelled with her about her *dhurma*, to sue her under a forged bond. She also stated that the said Damoodur Kur had previously preferred a false charge of theft against her before the magistrate of Poorie, through Nemai Churn Teeharry, another of his gomashas, which had been dismissed; and that the plaintiff did no business as a mahajun or money lender.

The plaintiff, in reply, denied that he was Damoodur Kur's gomasha, and stated that he did carry on business as mahajun.

The moonsiff for reasons detailed at great length in his proceedings, believing that the plaintiff had not the means of lending the defendant so large a sum as rupees 60, and concluding that the bond had been forged at the instigation of Damoodur Kur, dismissed the claim, and held the plaintiff to bail on a charge of forgery; and

against this decision plaintiff appeals, stating that the execution of the bond was duly proved by his witnesses.

### JUDGMENT.

As there are only two witnesses to the bond, besides the writer of it, who it is not likely would inculcate himself by stating that he was employed by the plaintiff to write a forged bond, and one of those two witnesses deposed, whether truly or falsely, that the bond was not written in his presence, and that he did not attest it, I cannot, after duly considering the numerous reasons assigned by the moonsiff for disbelieving that the defendant borrowed the money from the plaintiff, see any sufficient grounds for interfering with his decision, and I hereby confirm the same, and dismiss the appeal, without serving notice on the respondent. The acting moonsiff will, however, be informed that, although there exists doubts regarding the genuineness of the bond, there does not appear sufficient grounds for detaining the plaintiff on a charge of forgery; and as it appears that the forgery case is still pending, the present moonsiff will be directed to dispose of it without delay.

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THE 28TH JANUARY 1851.

„ No. 7 of 1850.

*Appeal from a decision of Sheelpershad Singh, Moonsiff of Cuttack, dated 13th December 1849.*

Chowdry Mahadeb Das, (Defendant,) Appellant,

*versus*

Chowdry Narain Mahapatur, (Plaintiff,) Respondent.

CLAIM, rupees 51-7, rent of 5 mauns, 3 goonths, 10 biswas of land in chuck Kujoree, mocudumme, mouza Irda, talook Gujrapore, from 1253 to 1255, at rupees 3-5-4 per maun, total rupees 17-2-4.

The particulars of this case are recorded at pages 63 and 64 of the Zillah Decisions for April last, on the second of which month I decreed the appeal, and reversed the moonsiff's decision, on the grounds that the *istimrarree pottah*, on which the defendant claimed a right to hold the land at a fixed rent of 1 rupee, had been proved: but on the plaintiff's preferring a special appeal to the Sudder Dewanny Adawlut, the case was remanded, on the 13th August 1850, to be tried over again, as this court had omitted "to decide on the plea of the plaintiff, to the effect that, admitting the *mokur-ruree* lease to have been executed, the plaintiff's claim will stand nevertheless, because the lease was granted by a *mocuddum*, whose tenure was sold for *arrears of rent* and purchased by the plaintiff."

## JUDGMENT.

Although it is no where, that I am aware of, definitely laid down, that sales held in execution of decrees for arrears of rent, under Regulation VIII. of 1831, are to have the same effect with regard to the cancelment of all leases or under tenures created by the defaulting tenant, as sales for arrears of Government revenue held under Act I. 1845, I am of opinion, with reference to the provisions of Regulation VIII. of 1819, which declares that in the event of the sale of a *putnee talook* for arrears of rent, all such incumbrances, the acts of the defaulters, become cancelled; that a like sale of a *mocuddummee*, which is a superior kind of tenure to that of a *putnee talook*, inasmuch that the zemindars themselves possess the power of creating *putnee* tenures, and they possess no such power with regard to *mocuddummees*, must also be held to cancel any leases or undertenures created by the defaulting *mocuddum*; and as, according to the general rules on which the settlement of the district is based, the zemindars have no right to interfere with or in any way to alter the assessment fixed on any *mocuddummee* tenure, but are merely entitled to fixed rental settled thereon by Government, I consider that the *istimraee pottah* in the present case, though granted by the late *mocuddum* to the zemindar in whose estate the tenure is situated, has become void by the sale of the *mocuddummee* for arrears of rent; and as the rent of the land in dispute has been ascertained by the ameen deputed to make local enquiry on the subject, to be rupees 3 per beegah. It is ordered, in cancelment of the former decision of this court, that the decree of the moonsiff be confirmed, and that the appeal be dismissed. The plaintiff's costs in this and the moonsiff's courts will be defrayed by the defendant, appellant, with interest, in addition to his own.

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## ZILLAH DINAGEPORE.

PRESENT: JAMES GRANT, ESQ., JUDGE.

THE 17<sup>TH</sup> JANUARY 1851.

No. 1 of 1849.

*Appeal from a decision of Gholam Asghur, Principal Sudder Ameen,  
dated 30th December 1848.*

Noroola Chowdhry, (Plaintiff,) Appellant,

*versus*

Gobind Chunder, (Defendant,) Respondent.

CLAIM, rupees 1353-8-9, due on account of a balance of rupees 731 in a debit and credit account for the year 1245 and part of 1246. The account is said to have been from the 30th Chyte 1245 up to the 4th of Jyte 1246, rupees 1095-13-5½, credit rupees 364-13-5½, debit leaving balance rupees 731. In a supplementary plaint, it is stated that the account opened on the 10th Jyte 1245. The plaintiff states that he was formerly sued by the defendant in two cases, on one bond for rupees 4098, and another for rupees 2000 given for the balance due by him on another debit and credit account, (1244;) that he then pleaded as a set-off, this balance of rupees 731 in his favor, and rupees 1000 deposited on the 10th Maugh 1846; that the cases were settled by his giving instalment bonds for rupees 4370, a deduction of rupees 1810-6 having been made from what was due on the bonds on account of the said sums (731 and 1000) with interest; that on the kistbundeas being produced in court, the then plaintiff would not agree to them, and his cases were nonsuited; that the cases were remanded by the Sudder Court, and subsequently decreed in full, he (then defendant) not being able to produce his documents which were with his mookhtear at Bhaugulpore.

The defendant asserts that the plaintiff's documents, as well as claim, are fictitious; that otherwise there would not have been such delay in instituting a suit; that plaintiff would not have applied to him to advance rupees 668 for revenue, in Bysack 1247, if he then had had money at plaintiff's credit; that the money deducted in the "kistbundeas" was to have been cash; and that had it appertained to what was due according to documents, they would have been specified; that the note respecting the rupees 1000, said to have been deposited, was not alluded to in answers of former cases, and that rupees 1731, with interest, would have come to much more than rupees 1810-6.



The plaintiff, in his reply with reference to the delay in instituting this suit, states that it was caused by difficulty and confusion from several of his estates being sold, but that it was notwithstanding within 8 years.

The defendant, in his rejoinder, states that the note (rookah) touching the deposit of 1000 rupees, was not mentioned by witnesses in the former cases who said that they made them over to the plaintiff, as his brother Kiritchand had refused to receive them; whereas the said Kiritchand was at that time absent on a pilgrimage to "Juggernath."

The principal sudder ameen dismissed the case, on the grounds that there was a discrepancy in the plaint and supplementary plaint, in respect to the debit and credit account on which the rupees 731 were said to be due both as to date and amount; that the sums claimed in this suit as well as in case, No. 2 had been disallowed as a set-off in former cases, which had not been appealed against or a review of judgment asked for; that this and case No. 2 were instituted after a delay of  $2\frac{1}{2}$  years; that in the "kistbundeas" produced in the former cases, the deductions were for cash and not for sums due on documents; that rupees 79-6, in excess of the two sums claimed, were deducted in the "kistbundeas," that is, rupees 1817-6, instead of rupees 1731, and that in the debit and credit account for 1244, filed by plaintiff, the balance is said to have been settled on the 6th Chyete 1244, by an ikrar for rupees 2000; whereas the actual date of the ikrar on which plaintiff was sued in one of the former cases was the 22nd of Assar 1245. In addition to the above, the principal sudder ameen, in case No. 2 of 1849, states that the note (rookah), dated the 27th Maugh 1246 as to the receipt of the 1,000 rupees, said to have been deposited, was not produced in the former case, or even mentioned in the answer filed on the 3rd Phalgun 1247, in which the money is merely said to have been deposited with a respectable banker; that the plaint is contradictory of the answer in the former case; that two witnesses in the former case stated in 1247, that they had first taken the money to Kiritchand, brother of the then plaintiff, who was at the time in Calcutta, as proved by a post office receipt for a letter.

The money sued for in this case and No. 2 of 1849, was formerly claimed as a set-off in two suits brought by the defendant against the plaintiff in 1840, on a bond for rupees 4098, dated the 10th Bysack 1245, and an "ikrar" for rupees 2000, dated the 22nd Assar 1245, said to be the balance due on account of money advanced for payment of revenue and private expenses. It was pleaded, generally, that several charges in the debit and credit account, such as for bribes, &c., were fraudulent, and specially that credit had not been given for rupees 731 balance of 1245 and 1246, nor for rupees 1000 placed in deposit on the 10th of Maugh 1246.

While the cases were pending, two instalment bonds were produced by the then plaintiff, who stated that rupees 1810-6 deducted

in them, as cash paid, were to have been actually paid in cash, in default of which he claimed decrees in full according to the said instalments.

The then defendant asserted that the sums deducted were on account of the rupees 731 and 1000, above mentioned, and that the other party had agreed to the arrangement. The cases were nonsuited by me; but the Sudder Court remanded them on the grounds that they should have been disposed of without reference to the "kistbundeas," as the plaintiff had not agreed to them. The cases were afterwards decreed in full by me, the defendant having failed to produce documents in support of the sums claimed as a set-off. The above circumstances I do not consider any bar to the present cases which are for the said sums with interest. For the sum claimed in this suit, a "hatchitta" for 1245 and part of 1246 is produced, showing a balance of rupees 731 in the plaintiff's favor. A similar document, for 1244, is given apparently to support the authenticity of the other, for the balance of which the bond (for rupees 2000) in one of the former suits is said to have been given. For the sum claimed in case No. 2, a note from the defendant, acknowledging the receipt of the 1000 rupees, is produced, and its not having been mentioned in the former case, is explained by the assertion that it was then with plaintiff's mooktear who was at Bhaugulpore.

What the principal sudder ameen considers a discrepancy in the plaint and supplement both as to date and account, is satisfactorily explained by the document itself, which is a debit and credit account opened on the 10th Jyte 1245, and closed on the 14th Jyte 1246, showing a credit of rupees 14,629-1-11-3, and a debit of rupees 13,898-1-11-3. On the 27th Phalagoon a balance was struck, showing rupees 299-13-8-1 in the plaintiff's favor, and on the 30th Chyte the account was re-opened by the plaintiff, paying in rupees 596, and again rupees 200 on the 5th Jyte 1246. The latter two sums, with the balance, make rupees 1095 13-8-1, the sum mentioned in the plaint, in which the 30th Chyte is also given, being the date on which the account was re-opened, while in the supplement, the 10th of Jyte, or the date on which the account originally opened, is given. The balance according to both is the same, and the account also tallies with the answers in the former cases. The rooka, or letter, acknowledging the receipt of the rupees 1000, not having been mentioned in the former cases, I do not consider of importance, as if not actually forthcoming when the answers were written, it may have been considered advisable not to specify it. The bond for rupees 2000 being dated the 22nd Assar 1245, instead of the 6th Chyte 1244, when the account was closed, with a balance of that amount and the sum added to the rupees 1731 in the kistbundeas, being short of the full interest, appears to me much more like artifice (to cause confusion) on the part of the defendant, the man of busi-

ness and money, than on that of plaintiff who was needy and a borrower, especially as the kistbundeas were produced in court by the defendant, then plaintiff, to whom they could hardly have been made over by the other party without cash, if cash was actually to have been deducted; while, on the other, there was nothing out of the way in their being made over to him, if the deduction agreed to was on account of the sums claimed by the amount sued for. The evidence of the witnesses in the former cases, as to the rupees 1000 having been offered, in the first instance, to Kiritchand, the brother of the defendant, I consider decidedly in favor of the plaintiff in this case, who was defendant in them, as it is impossible to account for the evidence, except on the supposition that they had been tampered with by the other party. I see no reason whatever to doubt the genuineness of the hathchitta, the balance of which is claimed in this case or the evidence of the plaintiff's witnesses, in case No. 2, as to the letter acknowledging that the rupees 1000 had been received. The respondent has now filed a khatabulhye; but it is irregular; being for three years with the plaintiff's account on two separate pages, in one of which bonds are entered; while in the other they are not, which appears to be the only difference. There is no detail of debit and credit for the balance of which the rupees 2000 bond, of one of the former cases, was said to have been given, the thing of all others most required to refute the account filed by the plaintiff. On the above grounds, I reverse the principal sudder ameen's decision, and decree the appeal, with costs.

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THE 17TH JANUARY 1851.

No. 2 of 1849.

*Appeal from a decision of Gholam Asghur, Principal Sudder Ameen, dated 30th December 1848.*

Noroolla Chowdhry, (Plaintiff,) Appellant,

*versus*

Gobind Chunder, (Defendant,) Respondent.

CLAIM, rupees 1875-11-0, due on 1000 rupees deposited on the 10th Mauth 1246.

The defendant denies the claim.

The principal sudder ameen dismissed the case, on the grounds given in case No. 1 of 1849 as well as this one, all of which have been alluded to by me in the former. On the same grounds I reverse the principal sudder ameen's decision in this case, and decree the appeal, with costs.

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THE 20TH JANUARY 1851.

No. 22 of 1849.

*Appeal from a decision of Moulvee Gholam Asghur, Principal Sudder Ameen, dated 7th July 1849.*

Momeen Sirdar, (Defendant,) Appellant,

*versus*

Kishen Kishower and others, (Plaintiffs,) Respondents.

CLAIM, rupees 1003, being 850 rupees deposited with defendant on the 14th Bysakh 1253, with interest from the 6th Phalgun 1253, when the case in which the 850 rupees were attached and placed in the defendant's charge, was settled by compromise, (soleh-nameh).

The defendant pleads that he had no authority to return the money without an order from court, and that he had expended 2 rupees, as pay to the man in charge of a boat which was also attached, and that the plaintiff in former suit had again sued the defendants.

The principal sudder ameen decreed the sum deposited, with interest, from the date on which this suit was instituted, instead of that on which the former one was compromised, as the money had been attached and no order for its release had issued from court. The appellant now urges that he is, under the above circumstances, not liable either for interest or costs. I am of opinion that he was fortunate in having to pay interest only from the date on which this suit was instituted. I therefore dismiss the appeal, with costs.

THE 24TH JANUARY 1851.

No. 10 of 1849.

*Appeal from a decision of Moulvee Gholam Asghur, Principal Sudder Ameen, dated 10th January 1849.*

Churun Das, (Plaintiff,) Appellant,

*versus*

Gourmonee, (Defendant,) Respondent.

CLAIM, possession of 155 beegahs, 19 cottahs, istumrar and lakhiraj, with mesne profits. Plaintiff claims as chela of Toolsee Das, chela of Assaram, chela of Bunsy Das, and states that, in 1218, he went to Gya leaving with his chela, Subisser, the property acquired by Bunsy Das and himself; that Subisser died in 1225, and was succeeded by Toolsee Das, to whom Khugisserce in 1226, made over, by deed of gift, a thakur with some lakhiraj land; that Gungapershad (husband of the defendant) obtained from Koonjbeharee a thakur which he placed in the thakurbaree of Toolsee Das, and purchased some lakhiraj land for expenses; that Gungapershad was,

therefore, constantly in the thakurbaree, and looked after all the land belonging to it; that on Toolsee Das's death, his chela Roop Das succeeded him, and another of his chela Luchmun went to a thakurbaree at Beergunge; that in 1242, he (the plaintiff) went on a pilgrimage, taking with him the abovementioned deed of gift and other documents; that on his return, in six years, he found that Roop Das was dead, and that his minor son Nund Das had been ousted from the thakurbaree by Kishenpershad, son of Gunga Pershad; that on the land being attached in 1250 by the raja, he (plaintiff) produced the said documents, and got it released; that Gourmonee (defendant) then sued under Act IV. of 1840, and was put in possession, on which he instituted this suit as a pauper.

The defendant pleads that, before going to Gya, Assaram made over his property to her husband, Gungapershad, by deed of gift; that Gungapershad engaged Toolsee Das as poojaree on 5 rupees a month; that in 1226, Khugisseree made over, by deed of gift, to Gunga Pershad, a thakur with lakhraj land in the name of his servant, Toolsee Das, who had only two chelas, Roop Das who succeeded him, and Luchmun Das; that Roop Das stole sundry title deeds and absconded, when Kishen Pershad complained in the foudjaree, and Roop Das had to give a mochulka as to the deeds which he said he had lost, and was imprisoned for three months; that she, her son, and husband have been in possession for a great length of time, which, under the law of limitation, bars the plaintiff's claim; that plaintiff was not a chela of Toolsee Das, nor he a chela of Assaram, and that the documents now produced by the plaintiff, are the stolen ones abovementioned.

The principal sudder ameen dismissed the case mainly on the ground that, with the exception of six months when the plaintiff obtained possession from the raja, before the Act IV. case, his having been in possession of Assaram, and Toolsee Das's property, is not proved; and that by the plaintiff's acknowledgment, the defendant, her son, and her husband, have had possession since the year 1218. The point for decision appears to me to be whether Toolsee Das was proprietor or merely the servant and representative of Gungapershad. The plaintiff allows that Gungapershad had possession as manager. The lands when attached in 1236, by the collector, were released in Gungapershad's name. From the documents filed, and evidence given, it is clear that the lands were let in farm, and the rent of the istumrar paid by Gungapershad and his successors.

The plaintiff's story of having taken with him, on a pilgrimage, the title deeds, while his elder chela, Roop Das, was in possession, is very improbable, while the charge of theft against Roop Das (with a view to obtaining the deeds according to the plaintiff) accounts for the documents being in his possession. The manner in which the plaintiff obtained possession, after the attachment by the raja before the Act IV. case, has all the appearance of dodge to obtain possession

on the strength of stolen documents, and his pedigree in the Act IV. case, is different from the one in this case; Omor Das being given in the former instead of Assaram Das, and his brother chelas, Roop Das and Luchmun Das, being left out in the succession to Toolsee Das. From the above, I am satisfied that Toolsee Das was not proprietor, and that the plaintiff's claim, as his heir, is without foundation. I therefore dismiss the appeal, with costs.

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THE 30TH JANUARY 1851.

No. 3 of 1849.

*Appeal from a decision of Moulvee Gholam Asghur, Principal Sudder Ameen, dated 7th March 1849.*

Soorjnarain and Beironath, (Defendants,) Appellants,

*versus*

Kissenchunder and Kalichunder, (Plaintiffs,) Respondents.

THE plaintiffs sued for rupees 800, damages against Gungadur and Hulladur, and their fathers Beironath and Sheebram. On the death of Sheebram, his son Soorjnarain was included as one of his heirs among the defendants.

The principal sudder ameen decreed rupees 200, with costs, against Gungadur and Hulladur, releasing the appellants, but leaving them to pay their own costs.

It appears that Gungadur and Hulladur accused the plaintiffs of forging stamps, and were sentenced by the magistrate to three months' imprisonment for a false complaint. The principal sudder ameen evidently considered them alone answerable for the libel, and the appellants' costs ought, on the same grounds, to have been made payable by the respondents. I therefore amend the principal sudder ameen's decision to the above extent, and decree the appeal, with costs.

THE 30TH JANUARY 1851.

No. 19 of 1849.

*Appeal from a decision of Moulvee Gholam Asghur, Principal Sudder Ameen, dated 25th May 1849.*

Kalichunder and Kissenchunder, (Defendants,) Appellants,

*versus*

Soorjnarain, heir of Beironath, (Plaintiff,) Respondent.

BEIRONATH sued the defendants for rupees 800, damages for abusive language, and died while the case was pending.

The principal sudder ameen dismissed the case with reference to a decision of the Sudder Court, dated the 26th of March 1849, but without costs. It is ruled, in the said decision, that "on the death of a plaintiff, in an action for damages for libel of a purely personal nature, it is not competent to his heir to proceed with it." In this case also the plaintiff sought to revive the suit, but his doing so was not disallowed, and I can see no good ground for making him pay the costs of the defendants which they claim. I therefore dismiss the appeal, with costs.

THE 31ST JANUARY 1851.

No. 28 of 1849.

*Appeal from a decision of Moulvee Gholam Asghur, Principal Sudder Ameen, dated 18th June 1849.*

Punchum Bewa, (Plaintiff,) Appellant,

*versus*

Gour Das and others, (Defendants,) Respondents.

CLAIM, possession of 14 beegahs, 10 cottahs, jumma rupees 19-15-3 $\frac{1}{4}$ . Defendants assert that 9 beegahs, 18 $\frac{3}{4}$  cottahs, jumma rupees 13-12 were decreed as the jote of "Bindabund" by the moonsiff of Rajarampore, and subsequently sold in a summary suit, and purchased by them. The former principal sudder ameen dismissed the case, on the ground that the moonsiff's decision regarding the land in dispute, was final. The case was remanded by me for revision (No. 11 of 1846, 27th September 1847) as the appellant urged that the land claimed by her was separate and distinct from that mentioned in the decision of the moonsiff and principal sudder ameen, and there was nothing in the record to prove the contrary. The defendants had given in proof of their having purchased the "jote" of Bindabund, or of its having been in his possession; and there was a considerable difference in the quantity of the land and the amount of the jumma said to belong to it from what the plaintiff claimed. The principal sudder ameen has again dismissed the case on the report of a mohurrir, in which it is stated that the land claimed by the plaintiff is identical with that in the defendant's possession as Bindabund's jote. The mohurrir was deputed to measure the land claimed by the plaintiff, as well as that claimed by the defendants. The land pointed out by the plaintiff was found to be 14 beegahs, 9 $\frac{3}{4}$  cottahs. The defendants did not attend, but the mohurrir without giving his authority states that, of the land measured, 4 beegahs belong to the plaintiff, and 10 beegahs to the defendants. This is clearly no ground for the dismissal of the plaintiff's claim. Gour Das is now the only respondent. A copy of the moonsiff's decision, abovementioned, was formerly filed by him, and Gooroopersad, who asserted that Bindabund's jote was purchased by Chand and

Meheroolla, and that they, the defendants, were in possession of it. How that possession was obtained is no proof of Bindabund having got possession of the jote or of its having been sold as stated. On the other hand, it is clear from the evidence for the plaintiff, and a return (filed in fouzdaree case) from the zemindar in whose estate the land is, that she had a jote of 14 beegahs, 10 cottahs, from which she was ousted by Bindabund. She again obtained possession from the collector, and Bindabund in consequence instituted a suit against her in the moonsiff's court for 9 beegahs, 18 $\frac{3}{4}$  cottahs, which was decreed according to the report of an ameen, apparently, on any thing but good grounds. There is neither proof of Bindabund's ever having obtained possession under this decree, nor of the respondent having any right to what was Bindabund's. The plaintiff, an old woman, appears to have been the victim of the ameen's reports, and I have no doubt as to her right to the land she claims. I therefore reverse the principal sudder ameen's decision, and decree the appeal, with costs. Mesne profits to be ascertained during execution.

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## ZILLAH HOOGHLY.

PRESENT: F. CARDEW, Esq., JUDGE.

THE 21ST JANUARY 1851.

Case No. 2 of 1848.

*Regular Appeal from a decision passed by the late Principal Sudder Ameen of Hooghly, Mr. James Reily, the 7th December 1847.*

Jogromohun Chukerbuttee and Roopram Chukerbuttee,  
(Defendants,) Appellants,

*versus*

Biprodas De and others, (Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiffs, as the zemindars of lot Sehakhala, on the 28th August 1844, to recover the right to the revenue of beegahs 39-8 of land situated in three mouzahs, namely, in mouza Juggutpore beegahs 6-17, in Sreeputteepore beegahs 29, and in Muheshbatee beegahs 3-12.

The case having been referred to the collector for report, under Section 30, Regulation II. of 1819; the defendants filed an answer to the effect that the land indicated in the plaint was lakhiraj appertaining to two taidads, which were duly registered in 1209, namely, taidad No. 12036, comprising their hereditary rent-free lands, No. 12034, comprising the rent-free lands of Manik Ram Haldar, part of which they had acquired by purchase; and that the plaintiffs had misrepresented and suppressed the names of the mouzas, in which the lands are situated; for, besides the three mouzas mentioned in the plaint, part of the lands described lay in mouza Bipropore and other mouzas corresponding with the entries in the taidads.

This the plaintiffs, in their reply, denied, and they stated that the lands indicated in the plaint were *mal*, and were not included in the taidads; that of 6 beegahs, 2 cottahs entered in the taidad, No. 12036, as situated in the three mouzas named in the plaint; the defendants had sold 3 beegahs, 5 cottahs to another party, and to the remainder, beegahs 2-17, comprising the site of the defendants' homestead, they (plaintiffs) had no claim; that Manik Ram Haldar's lands, entered in the taidad No. 12034, had been purchased by Ramjy Bhuttacharje and others, who were in possession, and the defendants had nothing to do with them.

The collector, with reference to the pleadings of the parties, and to the taidads, chars, and other documents, filed by the defendants in support of their claim to hold the lands free of assessment, recorded his opinion that beegahs 6-7 of land situated in mouza Juggutpore, beegah 1-5 in Muheshbattee, and beegahs 13-7 in Sreeputeepore, total beegahs 20-19, entered in the two taidads, whether the same were in the possession of the defendants or of other persons, were valid lakhiraj; but that the pleas of the parties could not be disposed of without a local enquiry.

A local ameen was accordingly deputed by the lower court to make an enquiry into the matters in dispute, and he filed his report; but the principal sudder ameen, Mr. James Reily, in his decision, took no notice whatever of the ameen's report nor of the report of the collector, and decreed the suit in favor of the plaintiffs, on the general grounds that the taidads, chars, and other documents filed by the defendants, were insufficient to prove their title to hold the lands rent-free.

On the 29th June 1849, the case came in appeal before Mr. Russell, the late judge, who took a different view of the case, and reversed the principal sudder ameen's decision, on the ground that those documents established the defendants' claim.

On special appeal, the Sudder Court, under date the 30th March 1850, reversed the judge's decision, and remanded the case, on the ground that the validity and permanency of a rent-free tenure had been declared by the lower court upon imperfect enquiry, and without reference to the several conditions required by law.

Thus the real point for decision in this case appears to have been lost sight of. There is no necessity to inquire into the validity or otherwise of the rent-free tenures claimed by the defendants under the two taidads, for the plaintiffs expressly stated, in their reply, that the lands, the subject of their suit, are distinct from the lands entered in those documents, and their vakeel, in this court, maintains the correctness of that statement.

The point for decision, therefore, is whether the lands, the subject of dispute, are identical with the lands entered in the taidads or distinct from them, and on this point the decision must turn.

I accordingly reverse the decision of the principal sudder ameen as having been passed on irrelevant grounds, and remand the case to the lower court with directions to the present principal sudder ameen to draw up a proceeding under Section 10, Regulation XXVI. of 1814, of which none appears to have been held, and to decide the case *de novo*.

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THE 22ND JANUARY 1851.

Case No. 5 of 1847.

*Appeal from a decision passed by the Collector of Hooghly,  
Mr. A. Reid, June 2nd, 1847.*

Bahir Das Mookhopadhya, (Defendant,) Appellant,

*versus*

Joykishto Mookhopadhya and Rajkisto Mookhopadhya,

(Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiffs as the proprietors of mouza Panrura, on the 10th December 1845, to recover the right to the revenue of 5 beegahs, 16 cottahs of land.

The defendant Bahir Das (appellant) claimed to hold the land as rent-free, on the ground that possession of the tenure was obtained by his ancestor previously to the date of the accession to the Dewanny, and had since been maintained without interruption; and in support of his plea he filed a char, bearing date the 27th Chyete 1174 B. S., which was registered in the collector's office with a taidad in the year 1209 B. S.

The collector rejected the char as being a forgery, and decreed the suit in favor of the plaintiffs. This decision was reversed by the late judge Mr. Russell, under date the 29th June 1848, and, on special appeal, the case was remanded by the Sudder Court, under date the 14th March 1850, on the ground that the judge, who had upheld the tenure as rent-free under Section 2, Regulation XIX. of 1793, "had not shown clearly in his decree how the evidence of the case establishes the conditions required by that law, viz. that the tenure has been held rent-free from before August 12th, 1765, and that there has been no subsequent disturbance of such possession."

I can myself find no grounds for doubting the authenticity of the char. Mr. Reid, the collector, rejects the document as a forgery, because the initial signature of the grantor, Mr. John Graham, (who appears to have held the office of superintendent of the bazee zumeen duftur, and the date in English differed in the handwriting and the color of the ink; because the signature and date in English were not transcribed on the copy of the char filed with the taidad in 1209; and because the text part of the document appeared to have been written with new ink on old paper.

Now the first of those reasons, so far from being a cause of suspicion of forgery, appears to me quite the reverse; for it is not likely that a forger would get the signature and date in English, written in a different handwriting, and with different colored ink, whereas the discrepancy may be easily accounted for by the supposition that Mr. John Graham got another person to affix the date to the deed; and it is remarkable that the signature and date, both in

respect to the handwriting and the color of the ink, correspond to a nicety to a similar document filed in this court in the year 1816, which came before me yesterday in the case of appeal No. 3 of 1847, and which had been declared by Mr. Reid to be authentic. The second reason given for rejecting the char, appears to me of no weight whatever, for the copy represents in the text an exact transcript of the original, and the absence of the signature and date in English may be accounted for by the fact that our language was scarcely known in this country in the period in question. The last reason given by the collector is not apparent to me, for I can discover no suspicious appearance whatever in the document.

The authenticity of the char is corroborated by its registry in the year 1209, and by the evidence of the defendant's witnesses, three old men, one of whom is upwards of 90 years of age, who depose that from the first dawn of their reason they have known the defendant and his ancestors to be in possession of the lands as rent-free; that they saw the defendant's grand-father in possession, and heard that he had acquired the tenure from his maternal grand-father Ramkishto Bundopadhya. This Ramkishto Bundopadhya is the person to whom the char was granted: the char is dated the 27th Chyte 1174 B. S., corresponding with the 7th June 1767, and it sets forth that the tenure had been held as rent-free from before the year 1148 to 1167 B. S., under authentic documents, and directs that it be continued rent-free, the sudder jumma bundee being confirmed, and a remission made in the mofussil hustblood jumma.

I consider it proved by the char, which was registered forty-seven years ago, and by the evidence of the witnesses, the best procurable at this distance of time; that the tenure has been held rent-free from before the 12th August 1765, the date set forth in the Sudder Court's decision. To prove any subsequent disturbance of such possession, it rests with the plaintiffs, and they have failed to do so in my opinion. They produced three witnesses to show that the land was formerly held as mal, or rent-paying, but their evidence is so vague and contradictory, that I can place no reliance on it.

It is objected that the char does not set forth the quantity of land held by the defendant in mouza Panrura. This is true; but it shows that the grantee had produced his documents, which probably were never returned to him; and the quantity of land entered in the taidad, beegahs 8-6 being in excess of the claim, and the land being identified by the witnesses, I hold the objection to be untenable.

I accordingly reverse the collector's decision, and decree the appeal to the appellant, with costs in both courts.

THE 24TH JANUARY 1851.

Case No. 10 of 1849.

*Regular Appeal from a decision passed by the Sudder Ameen of Hooghly, Pundit Sreeram Turkolunkar, December 26th, 1848.*

Bhowance Churn Bose, (Plaintiff,) Appellant,

*versus*

Surajooddeen Khoonkar and Anceesooddeen Khoonkar,

(Defendants,) Respondents.

THIS suit was instituted by the plaintiff (appellant) as the putnee talookdar of hooda Noupala, &c., in turf Rubeebagh, on the 30th August 1847, to contest a summary decision passed by the deputy collector of Hooghly, under Regulation V. of 1812.

The plaintiff had issued an attachment of distraint on the defendants' property, with the assistance of a muzkooree peon, deputed by the police darogah, under Regulation XX. of 1817, to recover an arrear of rent to the amount of Company's rupees 335-6-10, alleged to be due from the defendants for the year 1253 B. S., on a jumma of Company's rupees 399-3-10-2; and the defendants, having furnished security, brought a suit to contest the demand before the collector, pleading that they held only beegahs 35-10 of mal land in the plaintiff's talook, at a jumma of rupees 51-2, and that the demand was made with the view of defrauding them of the right to certain rent-free land in their possession. The deputy collector, on the 9th July 1847, gave the defendants a decree, the justness of which the plaintiff impugned, on the grounds that his demand was proved by the accounts filed by him, and that the defendants had paid rent to him, at the rate claimed, in preceding years; and he accounted for the absence of the kubooleut, or agreement, under which the demand was made, by the fact that the document had been carried off by his late gomashtha, Mritinjoy Mujoomdar, in collusion with the defendants.

The defendants, in answer to the plaint, maintained that the demand was utterly false.

The sudder ameen dismissed the suit, on the main ground that the jumma-wasil-bakee accounts, filed by the plaintiff, were not proved by the evidence of his witnesses.

The plaintiff founds his appeal on the allegation that his claim is proved, with reference to the rule laid down in the Construction No. 696, by the evidence adduced by him.

On perusal of that evidence I entirely concur in the judgment passed by the lower court. To prove the jumma-wasil-bakee accounts only one witness is produced, who says that they bear the signature of the plaintiff's late gomashtha, Mritinjoy Mujoomdar; but he is unable to depose that they are correct. Three other witnesses depose that the defendants paid rent to the plaintiff (a fact admitted

in the answer), but in respect to the amount of the rent, and the quantity of land, they could give no particulars. Such evidence is wholly insufficient to establish a claim of this nature, and I therefore confirm the decision of the lower court, and dismiss the appeal, with costs.

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THE 25TH JANUARY 1851.

Case No. 10 of 1848.

*Regular Appeal from a decision passed by the Sudder Ameen of Hooghly, Pundit Sreeram Turkolunkar, August 18th, 1848.*

Gobind Chunder Pal, (Plaintiff,) Appellant,

*versus*

Kumul Pundit and others, (Defendants,) Respondents.

THIS suit was instituted on the 10th September 1846, to recover possession of 101 beegahs, 12 cottahs of rent-paying land, situated in mouza Migsar *alias* Tufseeguria, bearing a jumma of Company's rupees 218-14-19, and to set aside a sale held in execution of a decree of court.

The plaintiff stated that the defendants Sumbhoo Chunder Das, Bhugubuttee Dasee, and Doorgamunee Dasee sold the land to him for the sum of 500 rupees, under a deed of sale, bearing date the 4th Bhadro 1249 B.S., to enable them to pay a demand for rent to the amount of rupees 156-9-5, awarded under a decree of court, to defray the expenses of Bhugubuttee Dasee's husband's shraddhu, and to maintain her minor son; that he was put into possession, and the vendor, Sumbhoo Chunder Das, gave him a kubooleut for the homestead at a rent of 1 rupee a year; that he let out part of the lands to under-tenants, and part he cultivated himself, and his name was duly registered in the serishla of the zemindars holding a 14 annas, 10 gundahs, 15 kag, and 1 teel share: the remaining shareholder refused to register. That the land was afterwards attached by defendant, Kumul Pundit, in execution of a decree awarded in his favor, against the vendors in the court of the moonsiff of Muhanad, and a claim preferred on his (plaintiff's) part was admitted by that officer, under date the 16th December 1843; but, on a summary appeal, the moonsiff's decision was reversed by the judge, and the property was subsequently sold, and was purchased by the decreeholder, Kumul Pundit, in the name of his son, Nuffer Chunder Pundit.

The defendants, Kumul Pundit and Nuffer Chunder Pundit, in answer, pleaded that the deed of sale, under which the claim was brought, collusive and fraudulent, and had been antedated; that the plaintiff was a relation of the debtor, Sumbhoo Chunder Das, being his sister's husband's brother, and he never had possession for a single day, and that Bhugubuttee Dasee, having a minor son, had not the power to sell the property.

A similar answer was filed by the defendants Kaseenath Kulya and Biprodas Patr, decreeholders, who had participated in the proceeds of the sale, in execution of decrees awarded in the favor against the vendors.

The sudder ameen dismissed the suit, recording that it was improbable that the vendors would have sold the lands, including the homestead and the standing crops, for they had no heavy debts at the time to discharge; that he suspected that it was a fraudulent transaction made to deprive the decreeholders of the money due to them; that, if the sale were true, the deed would have been registered; and that, moreover, under the Hindoo law, a female had not the power to alienate her husband's property, and Bhugubuttee Dasee had a minor son alive, whose rights she could not sell.

This decision, in my opinion, does not meet the requirements of Act XII. of 1843. It is founded on mere supposition without reference to the evidence adduced by the parties, and the exposition of the Hindoo law is given without regard to the fact that one of the vendors is a male, and to the reasons given in the plaint, warranting the alienation of the property on the part of Bhugubuttee Dasee. The sudder ameen should have examined and weighed the evidence, documentary and oral, adduced by the parties, and have founded his decision on that, with reference to the point whether the sale was *bonâ fide* made according to law previous to the date of attachment of the property or not. I reverse the decision as being incomplete, and remand the case to the lower court for re-trial, with reference to the foregoing remarks.

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THE 25TH JANUARY 1851.

Case No. 5 of 1849.

*Regular Appeal from a decision passed by the Sudder Ameen of Hooghly, Pundit Sreeram Turkolunkar, December 28th, 1848.*

Dyamyee Dibya, (Defendant,) Appellant,

*versus*

Narayun Beet, (Plaintiff,) Respondent.

THIS suit was instituted on the 4th August 1847, to recover the sum of Company's rupees 426-10-8, principal and interest, on a bond, bearing date the 17th Bysakh 1243 B. S., alleged to have been executed by Rasbeharee Chukerbuttee and Khetrnath Chukerbuttee, both deceased, the husbands of the defendants Dyamyee Dibya and Denoomyee Dibya, in acknowledgment of a loan of 200 Sicca rupees.

The defendant Dyamyee Dibya, appellant, in answer, denied the bond, pleading that the suit had been got up by one Ramjeebun Foujdar, because she and her son-in-law had refused to admit him to partake of their meals; and she alleged that she had quarrelled



with her sister-in-law, Denoomyee Dibya, who had been made a defendant with the view to her filing a confession of judgment.

The defendant Denoomyee Dibya did not appear.

The sudder ameen decreed the suit in favor of the plaintiff, on the grounds that the execution of the bond, and the loan of the money were proved by the subscribing witnesses, and that the evidence of the witnesses adduced in support of the answer was worthless. And he entered into a long investigation of an alleged fact, that the defendant Dyamyee Dibya had endeavoured to compromise the claim after the pleadings were completed, the proving of which fact he regarded as a corroboration of the claim.

The attempt to bring about a compromise was foreign to the pleadings, and it was therefore irregular in the sudder ameen to enter into an investigation of the matter. The point for decision is whether the bond was duly executed by the defendant's husband or not; and on this point the evidence of the three subscribing witnesses examined for the plaintiff is clear and positive, and nothing, beyond general remarks, has been urged, in the reasons of appeal, calculated to refute the same. The evidence of the two witnesses examined on the part of the defendant Dyamyee Dibya, appellant, establishes no connexion between the plaintiff and Ramjeebun Foujdar, and the alleged quarrel with this person being recent, and the stamp paper on which the bond is engrossed having been purchased in the name of Rasbeharee Chukerbuttee upwards of 11 years ago; the plea that Ramjeebun Foujdar had got up the suit is most improbable; for where could the plaintiff go to purchase an old stamp so exactly suited to his purpose. I confirm the decision of the lower court for the foregoing reasons, and dismiss the appeal, with costs.

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THE 27TH JANUARY 1851.

Case No. 10 of 1849.

*Regular Appeal from a decision passed by the Sudder Ameen of Hooghly, Pundit Sreeram Turkolunkar, April 24th, 1849.*

Oma Churn Busoo, (Defendant,) Appellant,

*versus*

Sheikh Panchoo Jemadar, (Plaintiff,) Respondent.

THIS suit was instituted on the 6th December 1847, to recover the sum of Company's rupees 530-11-13, being the balance due on a bond bearing date the 3rd Jyte 1245 B. S., alleged to have been executed by the defendants Omachurn Busoo, (appellant,) and Nyan Tara Dasee and Sukhee Soondree Dasee, deceased, in acknowledgment of a loan of 500 rupees, through a bank note, No. 2927.

The defendant Omachurn Busoo, in answer, denied the bond, and pleaded that the note (which he had paid into the collector's office

as revenue) had been given to him by the plaintiff in exchange for 500 rupees cash; and that the suit had been got up through enmity.

The defendants Nyan Tara Dasee and Chunder Mookhee Dasee and others, heirs of the deceased Sukhee Soondree Dasee, did not appear.

The sudder ameen decreed the suit in favor of the plaintiff, on the grounds that execution of the bond was duly proved by the evidence adduced on his part; and that the evidence of the defendant's witnesses, two of whom were his dependants, and the third was at variance with the plaintiff, was unworthy of confidence; especially as no sufficient cause had been given as to why the cash had been exchanged for a note.

The justness of this decision is impugned in appeal, on the grounds that the evidence of the plaintiff's witnesses is contradictory, and that the defendant's witnesses establish his plea. No reasons are given for the assertions; and, being of opinion, on perusal of the record, that the claim is satisfactorily proved, I reject the appeal, and confirm the decision of the lower court, under Clause 2, Section 3, Regulation V. of 1831.

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THE 28TH JANUARY 1851.

Case No. 2 of 1849.

*Regular Appeal from a decision passed by the late Principal Sudder Ameen of Hooghly, Mr. James Reily, December 20th, 1848.*

Hatima Khatoon, (Defendant,) Appellant,

*versus*

Jugut Ram Huldar, (Plaintiff,) Respondent.

IN this case, which involves a claim to the assessment of 8 beegahs and  $\frac{1}{2}$  cottah of land, situated in mouza Sekrahattee, pergunnah Kishito-anundpore; no proceeding was held by the lower court under Clause 10, Regulation XXVI. of 1814. I therefore reverse the decision as being incomplete, and remand the case to the present principal sudder ameen, with directions to proceed with it *de novo*.

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THE 28TH JANUARY 1851.

Case No. 11 of 1849.

*Regular Appeal from a decision passed by the Sudder Ameen, of Hooghly, Pundit Sreeram Turkolunkar, May 26th, 1849.*

Hafizooddeen Hossein, (Defendant,) Appellant,

*versus*

Aga Mahommed Kamul Tuhuranee, (Plaintiff,) Respondent.

THIS suit was instituted on the 25th March 1848, to recover the sum of Company's rupees 609-10-15, on a mortgage bond, bearing date the 27th May 1846.

The defendant, in answer, acknowledged the bond, and pleaded that a deduction from the loan had been made to the amount of rupees 15, in order to evade the interest laws; and that he had repaid, at different times, the sum of rupees 180, under the plaintiff's receipts.

The sudder ameen decreed the suit in favor of the plaintiff, on the grounds that the subscribing witnesses of the bond examined on his part, proved that the amount of the bond, rupees 500, was paid in full; that the defendant had failed to produce any witnesses, and, moreover, there was a condition attached to the bond, that no payments should be admitted unless endorsed on the deed.

I find that a summons was served on the defendant's witnesses on the 29th Bysakh 1256 B. S., corresponding with the 10th May 1849, and the defendant gave the court peon a writing (zimanamah), intimating that he had taken the witnesses into his own charge, and would produce them himself in court. On the nazir's return to that effect, the sudder ameen wrote an order, dated the 15th May 1849, directing the defendant's vakeel to produce his witnesses within three days, and on the 26th idem the case was decided.

The service of the summons was irregular, inasmuch as no specific day was named for the attendance of the witnesses as required by Section 4, Regulation IV. of 1793, and the order of the 15th May 1849 does not show on the face of it that it was passed in the presence of the defendant's vakeel. I therefore reverse the decision as being incomplete, and remand the case to the sudder ameen with directions to give the defendant a reasonable time to produce his witnesses, and, if he require it, to issue a fresh summons in the terms of the law above quoted.

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THE 31ST JANUARY 1851.

Case No. 6 of 1849.

*Regular Appeal from a decision passed by the Sudder Ameen of Hooghly, Sreeram Turkolunkar, February 17th, 1849.*

Sungkurree Dasee, (Plaintiff,) Appellant,

*versus*

Rajkoomaree Dasee and others, (Defendants,) Respondents.

THIS suit was instituted by the plaintiff on the 2nd July 1846, on a value of Company's rupees 499, to uphold her right to possession of 5 beegahs, 10 cottahs of rent-free land situated in mouza Seelpore, pergunnah Khosalpore.

The substance of the plaint, which is drawn up at great length in barely intelligible language, is as follows:

The plaintiff holds in the above mouza certain real property comprising garden and other land, as per particulars set forth, partly acquired by her husband at a public sale held in the year 1207 B. S.,

in execution of a decree of court, and partly acquired subsequently by herself by private purchase. In execution of a decree awarded against the defendants Ishur Chunder Raee and others, the decreeholder, Sreenath Mookhopadhia, (defendant,) having attached 6 times the property, as per particulars given, a collusive claim was put in on the part of Rajkoomaree Dasee, the debtors' sister, alleging that part of the attached property, 3 beegahs, had been purchased by her under a deed of sale executed by Rajkisto Singh, defendant, the son of Prankisto Singh, who had acquired the same at public sale, and that the rest of the property was lakhiraj purchased by her from Jugomohun Chukerbuttee. Plaintiff at the same time filed a counter-claim to the effect that the boundaries given in the deed of sale filed by Rajkoomaree Dasee, as having been executed in her favor by Rajkisto Singh, included 3 beegahs of garden land named khirkee garden, purchased by plaintiff's husband in 1207, which she had let to the defendant Muthoor Hajaree, under date the 5th Poos 1250; that 1 beegah of land, 6 cottahs, 11 chittacks, of which was attached by the decreeholder under item No. 2, was included in 4 beegahs of cocoanut garden land, named narkil garden, also purchased by plaintiff's husband in 1207, which she had let, together with a tank named Jogee, to the debtors, Ishur Chunder Raee and others, in the name of Ram Nurain Mookhopadhia, in the year 1242: the said tank named Jogee was also included within the boundaries of Rajkoomaree Dasee's collusive deed of sale; that item No. 5, attached as the homestead of Goluk Sapooee, included 10 cottahs belonging to plaintiff, which had been purchased by her from Seeb Chunder Raee, father of the debtors Ishur Chunder Raee and Purtab Chund Race, under a deed of sale, dated the 30th Kartick 1231; and item No. 6, 2 beegahs, attached as garden land and homestead in the occupancy of Huroo Malik, was mal of plaintiff's talook, turuf Satannee, of mouza Seebpore, and was held by the debtors as invalid lakhiraj. The principal sudder ameen, in whose court these claims were brought, on the 30th August 1845, released the property from attachment, on the collusive claim preferred by Rajkoomaree Dasee, and in respect to plaintiff's claim he recorded that her statement was proved, but the property having been released from attachment, no other enquiry was necessary. Plaintiff, therefore, though she was still in possession of the property, instituted this suit to uphold her right to possession of 5 beegahs, 10 cottahs of land, namely,

3 beegahs of land, comprising khirkee garden,

1 beegah, comprising Jogee tank,

1 beegah, belonging to narkil garden, and

10 cottahs of lakhiraj land occupied by Goluk Sapooee.

And she added that she would bring a separate action on account of the 2 beegahs of mal land, under Regulation II. of 1819.

The defendant, Muthoor Hajaree, filed an answer, alleging that he was in possession of khirkee garden, under a pottah granted to him by the plaintiff, on the 5th Poos 1250.

The defendant, Rajkoomaree Dasee, in answer, denied the plaintiff's claim *in toto*, stating that the lands described in the plaint as belonging to khirkee and narkil gardens, and also Jogee tank were included in the property attached in 1236 by the decreeholder, Roop Nurain Ghose, in execution of a decree against Bhyrub Chunder Racee and others, which property was purchased by Prankisto Singh, who had possession according to the boundaries laid down in the sale papers, and she, defendant, succeeded to possession in virtue of a deed of sale executed in her favor by Prankisto Singh's son, Rajkisto Singh, under date the 23rd Phalgun 1247; that plaintiff never had possession of this property, and her claim was therefore barred by Section 14, Regulation III. of 1793, and Clause 2, Section 2, Regulation II. of 1805; that the claim to the lakhiraj land occupied by Goluk Sapooce was equally false, the said land being included with 4 beegahs, 15 cottahs of land purchased by her (defendant) from the owner, Juggomohun Chukerbuttee, on the 28th Bhadro 1249.

The sudder ameen recorded his decisions as follows :

"Is the plaintiff's claim fit to be heard or not? On perusal of the whole of the papers of the case and the plaintiff's proofs and the evidence of her witnesses, it appears that the defendant, Rajkoomaree Dasee, in her answer, states that in 1236, in execution of a decree awarded against Bhyrub Chundur Racee and others, in favor of Roop Narayun Ghose, decree-holder, the defendant Rajkishto Singh's father, Prankishto Singh, purchased the debtor's property and had possession, and on the 23rd Phalgun 1247, sold the same to the defendant, Rajkoomaree Dasee, for 197 rupees, under a deed of sale according to the boundaries given. The plaintiff says that her property was included within the boundaries of the property sold, and she sues to get her property excluded from the said boundaries; but it is shown that the sale took place in 1236, and plaintiff's property was included within the boundaries of the land sold; therefore, twelve years having elapsed, such a suit cannot be heard; especially until the sale be set aside, a claim to exclude any land from the boundaries of the land sold is fruitless." The sudder ameen therefore dismissed the suit.

This decision of the sudder ameen is altogether untenable. The plaintiff distinctly states, in her petition of plaint, that she is still in possession of the land, the subject of her claim, a plea which the sudder ameen has lost sight of, and which constitutes one of the main points for decision; and how the bare fact that the land was included within the boundaries entered in the sale papers of 1236, to which the plaintiff was not a party, can effect her right,

I do not understand ; nor do I understand what the sudder ameen means by stating that the claim cannot be heard till the sale held in 1236 be set aside. In respect to the land occupied by Goluk Sapooee, the pleas regarding which are distinct and separate, the sudder ameen passes no decision whatever.

I find that an *ex parte* proceeding, giving the particulars of the plaint, was held by the lower court on the 15th January 1847, when the plaintiff's proofs were called for; but no proceeding of any kind was held under Section 10, Regulation XXVI. of 1814, after the defendant's answers were filed and admitted. The sudder ameen's decision is therefore incomplete on this account also. I consequently reverse the same, and remand the suit for re-trial, with reference to the above remarks.



## ZILLAH JESSORE.

PRESENT: C. STEER, ESQ., OFFICIATING JUDGE.

THE 24TH JANUARY 1851.

No. 73 of 1850.

*Appeal against a decision of Ramgopal Shome, Moonsiff of Lahagorah,  
dated the 28th January 1850.*

Sobunullah, (Plaintiff,) Appellant,

*versus*

Rammohun Bundopadia, Gecereeschunder Bundopadia, Kullunder Khan, Asgur, Panchu and others, (Defendants,) Respondents.

THIS suit was instituted on the 26th February 1848, to recover possession of two jote jummas, with wasilaut and interest thereon. Suit valued at rupees 63-12-19-1.

The plaint sets forth that in the village of Dhopa Dhoha, pergunnah Nuldee, Rammohun Bundopadia and others, possess a mo-fussil talook in the name of Rada Kishen, and also some lakhiraj lands. The said Rammohun and his partners, on the 15th Bhadoon 1253, gave plaintiff a mooroosee pottah for the vacant jote of Arzanullah, and Bagoo, on a jumma of rupees 5-7-6, and another mooroosee pottah, on the same date, for the vacant jote of Bagoo, and Kungalee, on a jumma of rupees 1-9-6; the lands comprised in the first pottah being part of the talook, and those in the 2nd pottah being part of the lakhiraj mehal. From 15th Falgoun 1254 to Sawun 1254, the plaintiff held quiet possession, but on the latter date, Kullunder Khan, the defendant, and others ousted him from both the jotes.

Kullunder Khan makes answer that the jumma, first mentioned in the plaint, did not belong to Arzanullah and Bagoo, but to Bagoo alone. When he died, his son Kungalee, who was sole heir of his father, being in debt and hard pressed, sold the jummas to the defendant in 1240, who, on the 21st Assar of the same year, obtained pottahs for the same from the talookdar Rammohun. He and his other partners in the talook, with a view to exact an increase of rent, have brought the present action through the plaintiff, and desire, after the lapse of 15 years' quiet possession on his part, to oust the defendant. The defendant urges that the suit must be thrown out under the law of limitation, and because the plaintiff has made



several parties, quite unconnected with the case, defendants in the suit, in order to prevent the defendant from citing them as witnesses.

Panchu and Asgur defendants make answer in support of the plaintiff's claim.

Rammohun Bundopadia and the other talookdars make no appearance.

The moonsiff, though he doubted the genuineness of the defendants' pottahs and receipts, and discredited also the fact of Kungalee selling his jote to the defendant in 1240, as, judging from his present appearance, the moonsiff considers he could not have been more than five years old at that time; still, as Kungalee himself admitted the sale, and the evidence adduced went to show that the jotes in question belonged only to his father, and not to him and Arzanullah jointly, and that the talookdars had no right to oust Kungalee or his representative, he dismissed the plaintiff's suit, giving the costs of both parties against the talookdars, as they were the originators of the suit, by giving two pottahs to different parties for the same land.

Three appeals have been instituted against this decision, which I take up together.

Sobanullah appeals against the order dismissing his suit, but urges no new matter.

Kullunder appeals against that part of the moonsiff's judgment which declares his pottah from the talookdar Rammohun, and his other documents, to be forgeries.

Rammohun, and Gress Chunder, out of the talookdars, appeal against their being charged with the costs of both parties.

#### JUDGMENT.

With the order of the lower court, dismissing Sobanullah's appeal, I quite coincide. He certainly got a pottah from the talookdars: but the evidence on Kullunder's side, corroborated by all the circumstances of the case, fully shows that the pottah to him (the plaintiff) was only an attempt on the talookdars' part to oust the defendant Kullunder. That the talookdars succeeded in giving their tool, Soban, possession, is no where shown; and from the facts and nature of the case, it is highly improbable that he obtained possession even for a day. As to the jote being the joint property of Arzanullah and Bagoo, it has been proved that the former had nothing to do with it, and Arzan's name has been associated with Bagoo, evidently for no other purpose but to throw impediments in the way of Kullunder's claim, and, if possible, invalidate his purchase. The order, dismissing Soban's suit, was therefore quite proper; and I pass the same order in respect to his appeal. He will pay his own costs in this court.

In regard to the appeal of Rammohun and Geerees out of the talookdars, they have shown no ground on which the order of the

lower court in respect to them can, with propriety, be interfered with. Soban's suit is really theirs; and they are answerable for the consequences: but even if this point were doubtful, their conduct still deserves that they be made to pay the costs of this suit, for they had no right to oust Kungalee, or Kungalee's purchaser, and ought not, with that object, to have given to another a pottah for his lands. Their appeal must be dismissed with costs.

In respect to Kullunder's appeal, the moonsiff had no business to pass any judgment on the deeds produced by Kullunder. In his opinion, the jotes belonged to Bagoo alone, whose heir Kungalee being present, it was only necessary to refer to him whether he sold the jotes to Kullunder or not. He admitted so doing, and as he had every right to sell what belonged to him, any investigation into Kullunder's title deeds was superfluous and uncalled for. The remarks, therefore, of the lower court, pronouncing on the invalidity of Kullunder's deeds, must be expunged, and I thereby declare them cancelled. In all other respects, the decision of the lower court stands. The costs of Kullunder in the appeal will be charged to the talookdars.

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THE 24TH JANUARY 1851.

No. 75 of 1850.

*Appeal against the decision of Ramgopal Some, Moonsiff of Lohagorah, dated the 28th January 1850.*

Rammohun Bundopadia and others, Appellants in the suit of  
Sobanullah, (Plaintiff),

*versus*

The Appellants, Kullunder Khan and others, (Defendants.)

THIS is a second appeal from the decision of which the particulars have been given in No. 73 of 1850.

The appellants are the talookdars upon whom the lower court threw the entire costs of that suit. For the reasons detailed in my judgment, in case No. 73, their appeal is dismissed. A copy of that judgment being filed with the papers of this number.

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THE 24TH JANUARY 1851.

No. 83 of 1850.

*Appeal against the decision of Ramgopal Some, Moonsiff of Lohagorah, dated the 28th January 1850.*

Kullunder Khan, Appellant in the suit of Puban Ullah, Plaintiff,

*versus*

The Appellant and others, Defendants.

THIS is a third appeal against the decision, of which the particulars are given in case No. 73.

The appellant gained the suit in the moonsiff's court; but he appeals against that part of the order which impeaches the genuineness of his pottah and receipts.

This appeal is decreed for the reasons stated in my judgment in suit No. 73 of 1850, of which a copy is to be filed with this appeal.

The talookdars, Rammohun and others, will pay the costs of Kullunder Khan in this court.

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THE 30TH JANUARY 1851.

No. 148 of 1850.

*Appeal against the decision of Moulvee Syed Ahmud, first grade  
Moonsiff of Mahomedpore, dated the 17th May 1850.*

Jaie Chant, (Plaintiff,) Appellant,

*versus*

Petumbeer Paul, (Defendant,) Respondent.

THE plaintiff sues upon a bond given to him by the defendant, in acknowledgment of a loan of rupees 11-3, bearing interest at 13 cowrees per rupee per mensem.

The defendant makes answer that the plaintiff would not give him more than 8 rupees cash, and wanted to debit him with the interest in advance, and also with the price of the stamp for the bond, to which the defendant objected, and, accordingly, refused to take the money or to execute the bond.

The moonsiff, after taking the evidence of two out of the four witnesses to the bond on the part of the plaintiff, and without calling for any witnesses from the defendant, dismissed the suit, as not proved. He remarked that the two witnesses were not agreed as to the place where the bond is said to have been executed, and that, from their evidence, it appeared that, out of the sum entered in the bond, rupees 2 were cut for the price of bricks, and 3 annas for the stamp, and that only 9 annas were given to the defendant in cash, which does not accord with either the plaint or the bond.

The plaintiff appeals, and pleads that it was quite immaterial whether he gave cash or the value of cash, and that it was not incumbent on him to specify in his plaint particulars, in respect to how much cash was paid, and how much was debited as value of articles taken in lieu of cash. That the bond was proved by two respectable parties who were present at the time of its execution, both of whom were witnesses to it; and as to the contradiction noticed by the moonsiff, as to the place of its execution, the difference between the two witnesses on that point, was very slight and immaterial.

#### JUDGMENT.

The contradiction is certainly very insignificant, and not at all sufficient to throw discredit on the bond. In respect to the other

objection raised against it, namely, that the plaint ought to have specified that 2 rupees worth of bricks were given in lieu of cash and 3 annas for a stamp; these particulars were not necessarily essential, and the claim is not to be thrown out on that account. Two of the subscribing witnesses to the bond, declared that the defendant executed it, and that is the point on which ought to rest his liability to pay the amount or not. The moonsiff has given judgment after hearing only two out of the four witnesses named by the plaintiff, and without hearing any witnesses at all on the part of the defence. His investigation being incomplete, I return the case to him for decision *de novo*, after hearing the evidence on both sides. He will also notice, if in his future decision he has reason to change his opinion in respect to the bond, whether the interest agreed upon is not in excess of the legal rate, and pass his orders on that point in conformity to law.

The appelland will receive back the value of his stamp for the appeal.

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THE 31ST JANUARY 1851.

No. 233 of 1850.

*Appeal against the decision of Moulvee Abdool Rub, Moonsiff of  
Dhurmpore, dated the 26th January 1850.*

Hojusta Khatoon, (Defendant,) Appellant,

*versus*

Beebee Ashruf, (Plaintiff,) Respondent.

THE plaintiff institutes this suit to recover the sum of rupees 286-1-6, arrears of rent, with interest of 1254-55, and up to Sawun 1256.

The moonsiff, on an *ex parte* investigation, gave the plaintiff a decree for the sum claimed.

The defendant now appeals, alleging in respect to his default in the lower court, and to the delay in filing his petition of appeal in the judge's court, that he never received any intimation of the suit having been brought against him; and that neither notice or proclamation were published in his village, and that the witnesses, who appeared to prove that fact, were creatures of the plaintiff.

#### JUDGMENT.

One of the two witnesses who were produced before the moonsiff to prove the due publication of the court's process for the defendant's appearance, called himself an inhabitant of Dhohokola, pergunnah Bagumabad; but in his written receipt given to the peon, by whom the ishtehar was or ought to have been published at the defendant's house, he calls himself a resident of Dhohokhola pergunnah Mahmudshaiee. This discrepancy, as to the place of

residence of one of the witnesses, is such that his evidence is of no worth, and must be set aside. There remains, therefore, but one witness to prove the issue of the ishtehar, and this is not sufficient for the purpose: besides neither of the two witnesses are persons such as, by Regulation XXIII. of 1814, Section 21, are competent to attest the due issue of a notice or other such process of the court. Being dissatisfied, on these grounds, with the proof adduced of the due issue of the notice and the proclamation to the defendant, I reverse the order of the lower court, and remand the suit to be tried *de novo*.

The appellant will be paid the value of the stamp for his appeal.

## ZILLAH MIDNAPORE.

PRESENT: W. LUKE, ESQ., JUDGE.

THE 7TH JANUARY 1851.

No. 168.

*Appeal from a decision of the Moonsiff of Nicasee, Warris Ulee, dated  
18th May 1850.*

Luckhenarain Chukerbutty, (Defendant,) Appellant,

*versus*

Gorachand Chukerbutty, (Plaintiff,) Respondent.

THIS is an action for possession of 2 cottahs of land, and compensation for damage done to trees.

This case was before this court on the 11th September 1849, (*vide* Decisions of Zillah Court for that month, page 79,) and remanded for further inquiry. The moonsiff, in supercession of his former order, now gives a verdict for the plaintiff, and the defendant dissatisfied appeals.

The appellant admits that the lakhiraj tank and two of its pугars or banks are the property of respondent, and he alleges his own title to the south and west banks. In support of this, he files a decree passed in his favor by the principal sudder ameen for some nine beegahs of lakhiraj land, but in that decision there is no allusion whatever to a tank or its banks, and is clearly irrelevant to the matter at issue. The witnesses on both sides swear in favor of the parties who cited them, and the decision of the case must rest on probabilities. Considering that the tank and two of its banks are the property of the plaintiff, and in his possession, and that tanks have usually four and not two banks, the probabilities predominate in favor of the plaintiff.

I therefore affirm the decision of the lower court, with costs.

THE 7TH JANUARY 1851.

No. 151.

*Appeal from a decision of the Moonsiff of Nicasee, Warris Allee, dated  
19th April 1850.*

Needheeram Dass, (Defendant,) Appellant,

*versus*

Mahadeb Chatterjea and others, (Plaintiffs,) Respondents.

THIS is an action for arrears of rent on account of the year 1255 and 1256 Umlee, laid at Company's rupees 114-2-13.

The plaintiffs aver that the defendant cultivates beegahs 25-17-2 biswas of land; that he is liable annually for Company's rupees 20-15-1½ gundahs in coin, and 3 beesee, 12 koree, 1 mar, 2 koobee in kind, agreeably with a kubooleut executed by defendant in 1250 Umlee; that for 1255 and 1256 Umlee, he is a defaulter, and, failing to recover, they have brought the present suit.

The defendant denies the cause of action, and pleads that he has paid such rent as was due. He alleges that he originally held 21 beegahs of land as a tenant of plaintiff's ancestor, but that a portion of his lease, beegahs 9-12-3, was resumed as forming part of a lakhiraj estate, "Issur Radhabullub Takore," and, in 1253 Umlee, a settlement of the said estate, on a 27 years' lease, was made by the collector with one Jadub Chunder, to whom defendant has paid rent on account of 1253 and 1254.

Jadub Chunder, in reply, affirms the other defendant's averments.

The moonsiff considers the kubooleut and his kistbundee good and valid, and that defendant (appellant) is liable to plaintiff for rent to the extent sued for, and that defendant's pleas to the contrary are not substantiated.

In appeal, the defendant Needheeram repeats his denial of liability, and that he ever gave a kubooleut or kistbundee. I discredit the kubooleut though certified by three witnesses, as it is not supported by any accounts for previous years showing what the demand, receipts, and balances were on account of that period. Moreover, it is not explained what necessity occurred in 1250 Umlee that should induce defendant to give a kubooleut, since plaintiffs admit he was a kudeemee ryot, and had cultivated these lands for many years past. The kistbundee is an evident fabrication, as it stipulates in Bysack 1244, to pay balances of that year by instalments: now as the Umlee year 1244 did not terminate till Bhadoon 1244, it is beyond probability that defendant should have executed a kistbundee in Bysack of that year, agreeing to pay rent by instalment, which was not actually due, and which his landlord could not legally call upon him to pay. For these reasons, I differ with the moonsiff, and decree the appeal, with costs, and reverse his decision.

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THE 9TH JANUARY 1851.

No. 129.

*Appeal from a decision of the Moonsiff of Pertalpore, Golam Sobhan, dated 30th March 1850.*

Juggurnath Singh and others, (Defendants,) Appellants,

*versus*

Mohunt Gobind Doss, (Plaintiff,) Respondent.

THE plaintiff sues to recover on a bond, Company's rupees, 134-12. The bond states that one hundred rupees were granted as

a loan, on the 17th Chyete 1254 Umlee, to the defendants, to meet the expenses of the marriage of Gopal Singh's son, to be repaid in the month of Aughun 1255 Umlee.

The defendants allowed judgment to go by default.

The moonsiff decrees for the plaintiff, and against this decision the defendants appeal. They plead, first, their entire ignorance of the transaction referred to, and, secondly, that the proceedings of the lower court in regard to the suit, are irregular and informal. It appears from the records, that the plaint was filed on the 21st February 1850, and an illamnamah was issued on the *same* date, and the nazir reported its service the next day, the 22nd idem, to the intent that defendants were not to be found. The *same* day an ishtahar was issued and a return made by the nazir on the day following, viz. the 23rd. On the 26th March the case was brought up for trial, when the moonsiff recorded that the suit must proceed *ex parte*, ordering plaintiff in the *same* proceeding to furnish his proofs. On the 30th March, plaintiff filed his bond and his list of witnesses. On that same day the witnesses were reported by the nazir as in attendance, their evidence was taken, and the suit finally disposed of by the moonsiff. Both the illamnamah and ishtaharnamah were, according to their purport, to have been returned, duly executed, in five days, and tulubamah was levied for that period. Their both being returned the day following, their issue from the moonsiff's court, without any reason being assigned for such unusual haste, is a very suspicious circumstance, and induces a belief that defendants never had the opportunity of acknowledging their receipt. The same haste is observable throughout the proceedings in the suit, and with reference to the date of institution of the plaint, the 21st February, and the moonsiff's decree, 30th March, there can be no doubt that it was taken up out of its turn and disposed of, and that the moonsiff knowingly sanctioned the irregularity. The appeal is admitted, and the suit remanded to be tried *de novo*.

The institution fee to be refunded.

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THE 16TH JANUARY 1851.

No. 175.

*Appeal from a decision of the Moonsiff of Nicasee, Waris Ulee, dated 25th May 1850.*

Gour Churn Pathur, (Plaintiff,) Appellant,

*versus*

Ramjoy Paramanick and Sheikh Punjoo, (Defendants,) Respondents.

THIS is an action for a bond debt, laid at Company's rupees 146-12.

The defendant, Ramjoy Paramanick, partially admits the claim, and pleads that plaintiff has not fulfilled his share of the contract. The defendant, Sheikh Punjoo, denies the cause of action *in toto*,



and pleads that the suit is altogether fraudulent and collusive to gratify revenge, because the plaintiff's brother was cast in a suit in which he (defendant) was one of the adverse party.

The moonsiff gives a verdict for the defendants only; one of the plaintiff's witnesses certifying the bond. This decision is affirmed, not only because the witnesses deny having attested the bond but, because there are good grounds for believing that the claim is altogether fictitious. The appeal is dismissed, with costs.

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THE 16TH JANUARY 1851.

No. 187.

*Appeal from a decision of the Moonsiff of Pertalpore, Golam Sobhan, dated 20th June 1850.*

Bissumbher Mytec, (Plaintiff,) Appellant,

*versus*

Jankeeram Mytee and others, (Defendants,) Respondents.

THIS is an action for possession, and to reverse a sale made in execution of a decree, laid at Company's rupees 149.

The plaintiff states that the defendants, "Kissore and Mohun Jena," sold him 2 beegahs, 10 cottahs of lakhiraj land, and executed a deed of conveyance for the same, on 5th Aughun 1256 Umlee, which was duly registered in the cazee's court on the 28th Maugh of the same year; that he entered on possession, and concluded a settlement with the ryots to whom he granted leases agreeably with which they paid their rents. In the month of Jyte following, the defendants, Kissore Jena and Mohun Jena, filed a suit against the latter for a bond debt, and they allowed judgment to go by default. The plaintiff then proceeded to sue out the decree, and caused the land, now the matter at issue, to be attached and sold, and Jankeeram, himself became the purchaser. When the attachment was levied, plaintiff's father (the plaintiff himself being absent) preferred objections, but they were overruled on the plea that *plaintiff* was the proper person to raise them. Plaintiff having, therefore, no other alternative to protect his interests, was compelled to institute the present suit.

The defendant, Jankeeram, in reply, alleges that the land in dispute was pledged to him as security for a bond debt; that in failure to obtain the latter, he sued the debtors, Kissore Jena and Mohun Jena, and obtained a decree which he sued out and caused the land to be attached with a view to sale. He adds that the defendants, *Kissore and Mohun*, have connived at the fabrication of the plaintiff's kuballa to defeat the execution of his decree. The defendants, Kissore Jena and Mohun Jena, allow judgment to go by default. The moonsiff assigns seven grounds for rejecting the kuballa.

*First.*—That the *date* of the *bond* is prior to that of the deed of transfer; that the former has been pronounced good and valid in a competent court, from whose decision no appeal was preferred.

*Second.*—That if the transfer under the kuballa was *bonâ fide*, the sellers would have made over the title deeds showing their right to sell, which they do not appear to have done.

*Third.*—That the boundaries specified in the deed of transfer under which Kissore Jena and Mohun Jena acquired the property from Goorooopershad, the original grantee, do not tally with those recorded in plaintiff's deed.

*Fourth.*—That plaintiff's deed specifies that the land transferred is occupied by site of dwelling, in contradiction of the plaint which avers that "Notuba Jena" and others are the cultivators of it.

*Fifth.*—That the signatures of Kissore Jena and Mohun Jena do not tally with those recorded elsewhere, and are not trustworthy.

*Sixth.*—That the stamp paper on which the deed of conveyance is engrossed, is endorsed one year and three months before the date of the latter, which, in the absence of explanation, is a very suspicious circumstance.

*Seventh.*—That the witnesses attesting the deed are unworthy of credit.

In appeal, the plaintiff urges that the moonsiff's reasons are grounded on false premises, and are opposed to the facts as they appear on the records of the case. As regards the tummusook on which the moonsiff lays so much stress, there cannot be a doubt that it was a fictitious document prepared by Jankeeram in collusion with the defendants, Kissore Jena and Mohun Jena, to prejudice plaintiff's title to the land he now sues for. It appears that Jankeeram instituted his suit for the bond debt before the moonsiff of Partabpore on the 28th May 1849, corresponding with the 17th Jyete 1246, six months and fifteen days *after* the date of plaintiff's kuballa, and four months *after* that deed had been duly registered in the cazee's court.

The tummusook is worded as a deed of conveyance, and is so contrary to the form usually adopted in drafting bonds, as to excite the suspicion that *that* style has been adopted to serve a purpose, and that purpose the one involved in the present suit. There are good grounds for suspecting that the moonsiff was aware of the irregularity existing in reference to the bond, otherwise it would be difficult to account for the haste with which he disposed of Jankeeram's case pertaining to it. The plaint was filed on the 28th May, and, on 10th July, a decree was passed in Jankeeram's favor; so that the suit from first to last only occupied one month and twelve days in transit through the court, a period so short as to amount to an impossibility, unless informalities and illegalities had occurred in the proceedings. Further, the plaintiff was no party to the bond suit, and any decision passed in it cannot prejudice his

claims, though the moonsiff declares to the contrary; nor were the deeds of conveyance that Kissore and Mohun Jena acquired from Goorooershah, of 9 beegahs of land, necessary to the validity of plaintiff's title. His purchase from those individuals was limited to a fractional portion only of those 9 beegahs, and plaintiff could not have obtained possession of the deeds aforesaid, without impugning Kissore and Mohun's title, and, under such circumstances, it is improbable they would have consented to make them over. On reference to the kuballa, it would appear that the moonsiff is in error in stating, as his fourth reason, that the land in dispute is stated to form the site of a dwelling house, which is at variance with the allegation in the plaint that the land is under cultivation. No such contradiction exists, as the plaint contains no such allegation as stated. The moonsiff also observes that the lapse of one year and three months, between the date of endorsement of the stamp paper and the date of plaintiff's kuballa, is a very suspicious circumstance, and an argument against the truth of that document: but the bond on which Jankeeram sued, and on which he obtained a decree from the moonsiff, was engrossed on a stamp paper endorsed *one year and four months* previously; but this circumstance was never noticed by the moonsiff, though, in the present instance, he deems it of importance sufficient, with other reasons, to invalidate the plaintiff's kuballa. Finally, the moonsiff declares the whole of plaintiff's witnesses unworthy of credit, but gives no grounds for such an opinion. Their testimony is consistent, they certify the kuballa, and I see no reason whatever to doubt their veracity. My conviction is that the transfer of the land by Kissore and Mohun Jena, was a *bonâ fide* transaction; that a deed of conveyance is good and valid; and that the defendant Jankeeram, in collusion with Kissore Jena and Mohun Jena, has by an act of fraud, in the completion of which he has been aided by the lower court, dispossessed plaintiff of his property.

I therefore decree the appeal, with all costs, and reverse the moonsiff's decision.

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THE 21ST JANUARY 1851.

No. 193.

*Appeal from a decision of the Sudder Ameen, Tarukchunder Ghose, dated 22nd June 1850.*

Musst. Pudda Deyee, (widow of Bholanath Jena,) and others,  
(Plaintiffs,) Appellants,

*versus*

Mr. C. Abbott and others, (Defendants,) Respondents.

THIS is an action to recover certain monies paid by plaintiffs to stay a sale for arrears of revenue, laid at 756 rupees.

The plaintiffs state that they held in joint tenancy with the defendants, Mohun Nundee and Raja Ramchunder Khan, the estate of Hoodah Koodaleeah, pergunnah Kaseejorah, jumma Company's rupees 2,805-4-4. The plaintiffs' share is 12-6-6, jumma Company's rupees 1173-14-10, for the remainder Company's rupees 1631-6-2-3, the defendants are liable. In the year 1253 Umlee, an inundation occurred, and, in consequence of the injuries done to the estate aforesaid, a suspension of the revenue on account of that year was granted, to be made good on or before the year 1255 Umlee. The plaintiffs made good their quota, but the defendants, Mohun Nundee and Raja Ramchunder, failed to pay their share amounting to Company's rupees 734-5-11, and, accordingly, in 1255 Umlee, the estate was put up to sale, and to stay it, the plaintiffs liquidated the demand on 5th April 1848. The defendant, Mr. Abbott, having succeeded to possession in the end of 1255 Umlee, he as well as the other defendants, co-partners in the estate, is responsible.

The defendant, Raja Ramchunder Khan, allows judgment to go by default.

The defendant, Muthoor Mohun Nundee, pleads that he has liquidated all the revenue due by him.

The defendant, Mr. Abbott, pleads that he obtained possession in Assin 1255, in virtue of a writ of the Supreme Court, and that he is not answerable for the laches of his predecessor.

The sudder ameen observes that the issue to be tried is whether the money on account of suspended revenue was paid or not by plaintiffs, and what party is liable to them for the same. He observes that the receipts on record prove that Mohun Nundee paid his quota; that other dakhillas, also on record, prove that plaintiffs, in addition to their own share of the liabilities, paid Company's rupees 734-7-4; that as Mr. Abbott did not yet get possession of the estate till the end of 1255 Umlee, no claim can lie against him for liability incurred by his predecessor, Raja Ramchunder Khan, who is alone the responsible party.

In appeal, the plaintiffs argue that the money paid by them was for the benefit of the estate, and that it, and consequently Mr. Abbott as the present incumbent, is liable for the same.

The appellant in arguing thus, seems to forget that, in paying the liabilities of Rajah Ramchunder Khan, he was protecting his own interests as well as those of the defendant, and that had he not made the balances good, his property as well as the defendants would have been involved in the loss that must have ensued. The revenue was due on account of the year 1253 Umlee; but by an act of grace on the part of Government, payment thereof was suspended till 1255, when the estate was exposed for sale to liquidate it. Mr. Abbott did not enter on possession till subsequent to these transactions in virtue of a writ of the Supreme Court. It would therefore be opposed to every principle of equity to make him responsible for

the laches of a predecessor who had reaped all the benefit of the indulgence granted by the Government, and had wilfully neglected to pay his revenue from the proceeds of the estate so long as he remained in possession of it. I therefore see no reason to interfere with the decision of the lower court, which is hereby affirmed, without serving a notice on the respondent.

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THE 21ST JANUARY 1851.

No. 195.

*Appeal from a decision of the Moonsiff of Pertabpore, Golam Sobhan,  
dated 21st June 1850.*

Musst. Bhyrubee Deye, (Plaintiff,) Appellant,

*versus*

Sheikh Shureef and Sheikh Kaloo, (Defendants,) Respondents.

THE plaintiff sues for a bond debt, laid at Company's rupees 23.

The defendants deny the cause of action, and plead an *alibi* on the date specified in the bond, and assign various reasons against the probability of the truth of plaintiff's claim.

The moonsiff is of opinion that it is to be inferred from the proceedings, that there was previous enmity between the parties. He deems it very improbable that a Bramin woman (a purdanasheen) would have admitted Musselmen to her presence. He likewise discredits the testimony of the witnesses, and the signatures on the bond represented to be those of the defendants, father and son, and dismisses the suit.

I see no reason to interfere with this decision. It is impossible to credit the evidence of the attesting witnesses. They swear *both* defendants affixed their signatures to the bond with their own hand, but it is evident to the eye, that both the defendants' names are written in *one* and the *same* hand. They also swear to minute details as to the value of the stamp paper on which the bond is engrossed, the date and hour of its execution, which (four years having elapsed) it is impossible they could recollect without being tutored. The decree of the lower court is accordingly affirmed, with costs.

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THE 27TH JANUARY 1851.

No. 189.

*Appeal from a decision of the Principal Sudder Ameen, A. Davidson,  
Esq., dated 14th June 1850.*

Rughoonath Misser and others, (Plaintiffs,) Appellants,

*versus*

Debeechn Misser, Lokenath Kur and others, (Defendants,) Respondents.

THIS is an action to set aside a hibbanama, and for possession of 78 beegahs, 19 cottahs, 13 biswas of land, with mesne profits, laid at rupees 1522-11-5.

Plaintiffs state they held certain lakhiraj lands, and other rights and privileges in joint tenancy with their deceased relative, Debee Churn; that on Debee Churn's death in 1251 Umlee, his mother, Jumna, and his widow, Anund Mayee, were dependant on plaintiffs for support, and the latter entered on possession and management of the property. In 1253, the widow, Anund Mayee, died, and the following year the mother, Jumna, in collusion with the defendant Lokenath Kur, executed a hibbanama in favor of the latter, on the 23rd Falgoun 1254, who, in furtherance thereof, ousted the plaintiffs. The defendant, Jumna, acknowledges the hibbanama, and pleads that she and her ancestors have been in undisturbed possession for the last eighty years. She denies the joint tenancy, and that plaintiffs have any title whatever to the property they claim. The principal sudder ameen dismisses the suit, as the plaintiffs are unable to show that they ever possessed a particle of the property they claim.

The issue to be adjudicated is, whether the plaintiffs were dispossessed, as alleged. Of this, as the court below observes, there is no proof whatever; nor is there evidence of possession prior to the year 1254 Umlee. In appeal, the plaintiffs allege that they are the legitimate heirs of Debee Churn, but this issue was never mooted below, and cannot be entered on in appeal. The principal sudder ameen's decision is affirmed, without serving notice on the respondents.

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THE 27TH JANUARY 1851.

No. 196.

*Appeal from a decision of the Principal Sudder Ameen, A. Davidson,  
Esq., 27th June 1850.*

Nuseeutoonnissa Beebee and others, (Defendants,) Appellants,

*versus*

Gunganarain Ghose, (Plaintiff,) Respondent.

THIS is an action for arrears of rent, laid at Company's rupees 1515.

The plaintiff states, that defendants held certain lands of his, on a putnee lease; that they were defaulters in 1256 Umlee, and to liquidate their liabilities the said lease was sold; and the sum now sued for, is the difference between the amount sale purchase, and the balance due by the defendants, (putneedars.)

The defendants plead payment, and, in proof thereof, file four dakhilas aggregating in amount Company's rupees 1749.

The principal sudder ameen is of opinion that the dakhilas are fictitious; that the evidence in support of their being given to defendants by the plaintiff, and that the money was paid to plaintiffs' mooktar, Mudun Poddar, is not trustworthy, and gives a verdict for the plaintiff.

In appeal, the defendants urge that the decision of the lower court is not justified by the evidence.

The reasons assigned by the lower court for rejecting the dakhilas appear good. The testimony of the defendants' witnesses is conflicting, and is further contradicted by Mudun Poddar, who denies having received any of the items on account of his master alleged by defendant, and his witnesses to have been paid to him. The probabilities are also strongly opposed to the truth of the defendants' statement. The putnee lease was advertised for sale for 13-16 kist of 1256 Umlee, and, in furtherance thereof, it was advertised and sold; and no demurrer of any kind was raised by the defaulters, either before or after the sale. Had the dakhilas been in existence prior to the date of sale, the obvious inference is, that the defendants would have produced them to the collector, and protested against the sale of their estate: on the contrary, however, they take no steps to obtain redress, but remain silent till the present suit is instituted, when for the first time the dakhilas are produced. I see therefore no grounds for interfering with the award of the lower court, which is hereby affirmed, without serving notice on the respondent.

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THE 28TH JANUARY 1851.

No. 199.

*Appeal from a decision of the Sudder Ameen, Baboo Taruck Chunder Ghose, dated 29th June 1850.*

Sheikh Rumjan Mahomed and others, (Defendants,) Appellants,  
*versus*

Kalcepershad Doss, (Plaintiff,) Respondent.

THE plaintiff sues for a bond debt, laid at rupees 505-8.

The defendant, Rumjan, filed a vukalutnamah and took no further steps in the case. The other defendants allowed judgment to go by default.

The sudder ameen disposed of the suit *ex parte*, and gave a verdict for the plaintiff.

In appeal, the defendants do not deny the bond, but plead payment: but this plea, after their default below, cannot be entered into. The claim is clearly established by the witnesses who were present when the money was given to defendants, and who certified the bond.

I therefore see no grounds for interfering with the sudder ameen's decision, which is affirmed.

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## ZILLAH MOORSHEDEABAD.

PRESENT: D. I. MONEY, ESQ., JUDGE.

THE 30TH JANUARY 1851.

No. 30 of 1849.

*Regular Appeal from a decision of Baboo Tarrakishen Haldar, Moonsiff of Jungypore.*

Kallechunder Buttacharj, (Defendant,) Appellant,

*versus*

Hossein Buksh, (Plaintiff,) Respondent.

SUIT for the recovery of possession of 8 beegahs of land, jote jumma, in mouza Shallee Sundah Nowah Nugger, with mesne profits and interest, laid at 235 rupees, 15 annas.

The plaintiff, in proof of his right to the disputed land, prefers a kuballa, or deed of sale, dated 18th March 1846, obtained from Omdah Bebee, his grandmother (deceased.) The kuballa was duly registered. The land claimed is included in 24 beegahs sold by Omdah Bebee to the plaintiff. He also puts in another kuballa, dated 5th Phalgun 1184 B. S., showing that the land was sold to Kalee Khan, the grandfather of Omdah Bebee, and that Omdah Bebee was his heir; and he brings forward witnesses to prove the execution of the deed of 1846.

The defendant pleads his purchase at a public auction of the village in which the land is situated, and his right in consequence to annul the deeds of sale produced by the plaintiff; that Omdah Bebee had no power to sell; and that the sale effected by her cannot be upheld.

The moonsiff considered the plaintiff's right to possession of the disputed land, proved by the report of the ameen deputed to make a local investigation, and by the documentary as well as other evidence put in by the plaintiff; that the land had been long in the possession of his ancestors; that although the first kuballa was torn in many parts, it had the cazee's seal on it, and specified some of the land and price for which it was sold, as well as the name of the purchaser, and he considered it genuine; that as the execution of the deed was prior to the decennial settlement, the defendant could not, as sale purchaser, interfere with the possession, and he therefore gave a decree in his favor, stating that Construction No. 138 was

inapplicable to the plea of the defendant, and referring, in confirmation of his opinion, to the decision of the Sudder Dewanny Adawlut in the case of Sheikh Mokeem Sircar, appellant, *versus* Turry Bebee, the respondent, and also to case No. 125 of 1846.

The defendant appeals from this decision, on the grounds, chiefly, that the first deed of sale is torn; that it is written in Persian and Bengallee, and they differ from each other; that there were no witnesses to it; that had it been executed before the decennial settlement, and Omdah Bebee and her ancestors been long in possession, their names would have been entered in the canoongo's papers; that there was no eye-witness to the fact of long possession; that the first deed of sale does not give the exact quantity of land, nor the price at which it was sold; that the boundaries specified in it do not agree with the boundaries in the second deed of sale, nor does the ameen's report tally with them.

The plaintiff's case rests upon the second deed of sale, which was duly registered, and some of the witnesses to it prove its execution. There is no suspicion attached to it. The disputed land is included in it. It would be difficult to pronounce a positive opinion in favor of the first deed of sale. The absence of the names of witnesses to the deed lessens the weight which the seal of the cazee attaches to it. The testimony of the cazee and the writer of the deed cannot be taken, otherwise, as in the case reported in the Sudder Dewanny Adawlut Select Report, 14th August 1801, volume I, page 52, the deed might be admitted, though there were no subscribing witnesses to it. It is of a very old date before the decennial settlement, and has been much injured by time. Even if this deed were considered suspicious, it does not affect the fact of lengthened possession on the part of the plaintiff's ancestors, which is proved by the ameen's report. The defendant, as sale purchaser of the whole village, cannot oust the plaintiff from possession of this portion. He is only entitled to the rent. There are no grounds for interfering with the moonsiff's decision which I, therefore, confirm, dismissing the appeal, with costs.

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THE 31ST JANUARY 1851.

No. 174 of 1845.

*Regular Appeal from a decision of Baboo Petumber Mookerjee, the Moonsiff of Zeeugunge.*

Munsook Doss Doogur, (Defendant,) Appellant,

*versus*

Oonoopchand Doogur, *alias* Jhulloo Baboo, (Plaintiff,) Respondent.

CLAIM, for 208 rupees, 4 annas, 15 pic, under a hautchitta executed in the month of Phalagoon 1245 B. S., instituted 19th March 1845, and decided 26th June 1845.

The plaint sets forth that the defendant, who served as gomashtha in the plaintiff's kootee at Baboochur, on an adjustment of accounts, after the demise of the plaintiff's father and grandfather, in whose names dealings had been carried on, and after his (defendant's) dismissal from service, in the month of Joist 1242 B. S., stood in debt to the plaintiff, as well as his other two brothers, on account of surplus amount of salary advanced to the amount of 298 rupees, 9 annas, 10 pie; that the defendant admitted the debt, and in the presence of many respectable witnesses executed hautchittas to the three brothers for their respective shares, being rupees 99-8-5 each, agreeing to liquidate the debt with interest at 12 per cent. per annum; that he failed to pay, and the plaintiff's elder brother sued against him and obtained a decree on the 13th March 1845; and that the plaintiff has brought this action against him for his share of the debt, including principal and interest.

The defendant, in his answer, denied the claim, and pleaded that he was in the service of the three brothers jointly, till the month of Srabun 1243 B. S.; that, in consequence of family broils, he went over to Shikar Chand and refused to serve under the plaintiff and his elder brother; that he was about to sue for the amount of his salary when the plaintiff, in order to avoid payment, in combination with his elder brother, and through enmity towards the younger, brought false actions against him; and that the khatta-buhees, from which the hautchittas are said to have been prepared, if called for, would confirm his statement.

The plaintiff filed a replication, and the defendant a rejoinder.

The moonsiff, with reference to his decision in the case No. 207 of 1844, and the evidence adduced by the plaintiff, considered his claim sufficiently established, and since the khatta-buhees could not be produced without consent of both parties, and as neither would swear to the truth of his statement, gave a decree for the plaintiff.

The defendant, in appeal, urges that he had favored Shikar Chand, the younger brother of the plaintiff, in a suit instituted by him against the other brothers for possession of the khatta-buhees; that he (the defendant) had written the khatta-buhees with his own hand; that the different joint properties of the brothers, left by their father, were entered in them; that the plaintiff, to favor his own views against Shikar Chand, had altered the khatta-buhees, and to prove that the alterations were in the defendant's handwriting, had brought this action against him; that the moonsiff decreed the case against him on the validity of a hautchitta, which was entirely got up, and the signature on which did not agree with his own; that the moonsiff's assertion, that the khatta-buhees could not be produced without the consent of both parties, was incorrect, as he had no objection to their production, nor to the plaintiff's proving his claim on oath; that the moonsiff, in order to supply what was defective in his decision against the defendant, in a case instituted by the plaintiff's

elder brother, Shetab Chand, has decreed this case against him also; that the defendant has appealed from that decision, and prays that both cases may be tried together.

### JUDGMENT.

The claim of the plaintiff entirely depends upon the genuineness of the hautchitta-buhee. There is an account on one leaf of it, which has been stamped, alleged to have been written and signed by the defendant. The balance claimed is on account of excess or advance of salary. The plaintiff has brought forward four witnesses to prove that the defendant wrote the account with his own hand and attested it with his signature; but there is nothing in the account to show that the balance is due on account of advance or excess of salary. It is written in the mohajunee Debanagree, and Ochubanund ameen, interpreter, deposes, on oath, that the balance of account appears to be the balance of a trading account. He also deposes that the alleged signature of the defendant does not agree with other of his signatures presented to him for comparison. Under these circumstances, the evidence of the plaintiff's witnesses alone is not sufficient to establish the claim, and entitle the plaintiff to a decree. The appeal is therefore admitted, the moonsiff's decree reversed, and a decree given for the (defendant) appellant, with costs against respondent.

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THE 31ST JANUARY 1851.

No. 77 of 1845.

*Regular Appeal from the decision of Baboo Petumber Mookerjee,  
Moonsiff of Zeugunge.*

Munsook Doss Doogur, (Defendant,) Appellant,

*versus*

Snetabchand Doogur, *alias* Kalloo Baboo, (Plaintiff,) Respondent.

CLAIM, for Company's rupees 201, principal and interest, under a hautchitta of the 28th Phalgun 1243 B. S., instituted 28th August 1844, and decided 15th March 1845.

The circumstances in this case are the same as those in case 174 of 1845.

The same order therefore is passed as in that case.

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THE 31ST JANUARY 1851.

No. 3 of 1850.

*Regular Appeal from the decision of Baboo Gooroopersad Bose,  
Moonsiff of Kandhee.*

Dirbamoyee Dosseah, (Plaintiff,) Appellant,

*versus*

Thakoor Doss Mookerjea, (deceased,) and after him his sons Rakal Doss Mookerjea, and Omachurn Mookerjea, *alias* Behareeloll Mookerjea, for themselves and as guardians on the part of Ram Doss Mookerjea, minor, and Haradhun Sandeal, Gomashta, (Defendants,) Respondents.

Ishanchunder Chatterjea, Claimant.

SUIT for the amount of rupees 63-10-6, balance of a contract for the manufacture of silk, instituted 11th January 1849, and decided 10th December 1849.

The plaint sets forth that, in mouza Gober Hattee, the plaintiff had purchased from Kistokinker Doss, some rent-free lands with a pukka banuk containing 80 ghuyes or works in it; that the defendant entered into a contract with the plaintiff; that he was to have the use of 56, out of the 80 ghuyes in the banuk, for the manufacture of silk, and to pay her 6-4 for every maund manufactured; that the defendant acted up to the terms of the contract, and gave the plaintiff a hauchitta of the quantities of silk manufactured; that from the bund Serabunee 1852 B. S. to that of the month of Chyete 1254 B. S., the defendant acted fraudulently; that the plaintiff had received only part of the amount due under the contract up to the 20th Poos 1255 B. S., and now sued for the balance.

The defendant, in his answer, pleaded that the banuk in question belonged to the plaintiff's brother, Kistokinker Doss; that the defendant had engaged to pay the hire of the works, but the banuk was sold at the sheriff's sale in satisfaction of a debt standing against Kistokinker Doss, and purchased by Ishanchunder Chutopadhia, claimant; that the defendant entered into a contract with him (the claimant) to manufacture the silk, and pay him for the hire for the works; that this contract was going on, and, lastly, that the plaintiff had preferred an objection to the sheriff's sale, which was rejected.

Ishanchunder (claimant) supported the above answer in his petition.

The plaintiff, in reply, added that a *separate* banuk in Gober Hattee was sold by the sheriff in satisfaction of the debt of her brother, Kistokinker Doss.

The moonsiff dismissed the suit, with costs against the plaintiff, on the following grounds:—that the plea of the defendant as regards the claimant's purchase of the banuk in question, was confirmed by

the letters of the Supreme Court, accompanied with translations, addressed to the magistrate, which the defendant filed; that the claim of the plaintiff cannot hold good, because she had not sued for possession, but for the recovery of the amount of contract, that the deed of sale obtained by the plaintiff from Kistokinker Doss, her brother, was not registered agreeably to Regulation XIX. of 1843; that, had it been genuine, the agreement between Kistokinker Doss and the defendant would have been mentioned in it; that the kubooleut filed by the plaintiff is suspicious, and that if it be admitted that the plaintiff's statement of the purchase of the property is correct, still, until she sues for the right of possession, she cannot claim the amount alleged to be due under the contract.

The plaintiff appeals from this decision, chiefly, on the following grounds; that the moonsiff admitted the letters of the Supreme Court, produced by the defendant, instead of the bynama in proof of the sale; that the report of the umlah deputed to the spot by the moonsiff shows that the banuk in question was not the banuk sold; that the moonsiff by this decision has established the title of Kistokinker Doss to the property, which was conveyed by him to the plaintiff by deed of sale, and this was irregular; that the said deed of sale conveyed to the plaintiff not only the rights of the banuck, but of pucka buildings, tank, &c.; and that the moonsiff's interference, and his opinion of the invalidity of the deed, were detrimental to her rights.

#### JUDGMENT.

There is some confusion in this case, but it has arisen from the moonsiff not confirming his attention to the point at issue between the parties.

The plaintiff sues for the balance of a sum of money due to her under a contract alleged to have been executed by the defendant.

The contract was that the defendant should have the use of 56 out of 80 works in a silk factory for the purpose of making silk, and should pay the plaintiff 6 rupees, 4 annas for every maund he made.

The plaintiff received a part of the amount due under the contract, and sues for the remainder 63 rupees, 10 annas, 6 pie. The deed of contract entered by the plaintiff is a kubooleut which the defendant denies. The deed is not registered. The plaintiff puts in a kuballa to prove her purchase of the silk factory, from her brother, Kistokinker Doss.

The defendant puts in evidence letters to show that the right, title, and interest of Kistokinker Doss in a silk factory, with 18 sets of works, &c. &c., were sold by the sheriff in Calcutta, on the 17th August 1848, and purchased by Ishanchunder Chatterjea, and that he had entered into a contract with the purchaser which the purchaser (the claimant) admits.

The moonsiff was irregular in expressing the opinion that the plaintiff could not sue under the contract, until she had established her right to possession, and, with this view of the question, proceeded further than was necessary in the case. The fact of possession was a distinct point, and not the point at issue between the parties; though it is not improbable that a suit, under the contract, was instituted in the hope that a decree might be obtained, which would help to a suit for possession.

The moonsiff was also irregular in sending for and questioning Kistokinker Doss, without an application from either party, and in pronouncing an opinion against the validity of the kuballa entered by the plaintiff.

The appeal is admitted, and, with reference to the Circular Orders of the 13th September 1843 and 14th May 1847, I direct the case, without regard to its merits, to be remanded to the moonsiff for re-trial. The stamp fee on the petition of appeal will be returned to the appellant.

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THE 31ST JANUARY 1851.

No. 6 of 1850.

*Regular Appeal from the decision of Baboo Gooroo pershad Bose,  
Moonsiff of Kandhee.*

Shunmanee Dibbea, and Chunderpershad Roy Chowdhry, (Plaintiffs,)  
Appellants,

*versus*

Brijolall Chowdhry Darogah Kallyprosad Roy Chowdhry, Chunder  
Kaunt Roy Chowdhry, and Chundee Doss Mookerjea and others,  
(Defendants,) Respondents.

Suit for rent, principal and interest, from 1254 B. S. to 1255 B. S., amounting to 24 rupees, 10 annas, 11 gundahs and 2 cowries, instituted 23rd July 1849, and decided 13th December 1849.

The plaint states that Brijolall defendant, by forcible means, erected a house on 10 cottahs of land belonging to the plaintiffs as proprietors, and to one of them as farmer, without taking a lease or entering into any engagement; that the land was a portion of kheraje land valued by the plaintiffs at 20 rupees, and 4 rupees, 2 annas, 11 gundahs, 2 cowrees, was the estimated rent.

The defendant Brijolall Darogah, in his answer, put in the following pleas: that the land was within the thanna compound, which could be verified by a map prepared by his predecessor and confirmed by the superintendent of police, who exempted the same from payment of rent; that he held a perwannah to that effect; that the magistrate's roobukaree would prove his statement, and that, had the plaintiffs been entitled to rent, they would have sued for it up to the present date.



The moonsiff, with reference to the magistrate's roobukaree and the documentary evidence adduced by the defendant, gave him a decree, dismissing the suit, with costs against the plaintiffs.

The plaintiffs, in appeal, urge that the moonsiff, contrary to Section 1, Act XXIX. of 1841, and the Circular Order of the Sudder Dewanny Adawlut of the 3rd January 1845, instead of dismissing the case on default, (the plaintiffs having failed to prosecute their suit) dismissed it on its merits; that the land is not situated within, but without the premises of the thanna; that the moonsiff could have satisfied himself of this by a local enquiry; that no native gentleman would allow his wife to dwell in a house standing within the premises of a public place like a thanna; whereas the defendant resides there with his family, and cannot therefore be exempted from rent.

The moonsiff was clearly irregular in passing such a decision. It was contrary to the provisions of Section 1, Act XXIX. of 1841, and the Circular Order of the Sudder Dewanny Adawlut of the 3rd January 1845. The appeal is therefore admitted, and the case will be remanded to the moonsiff for re-trial. The stamp fee to be returned to the appellants

## ZILLAH MYMENSING.

PRESENT: R. E. CUNLIFFE, Esq., JUDGE.

THE 2ND JANUARY 1851.

No. 1 of 1850.

*Appeal from a decision of Moulvee Ameerooddeen Mahomed, Sudder Ameen of Zillah Mymensing, dated 6th June 1850.*

Tarrakunth Bhuttacharge, guardian of Kalleecoomar, minor son of Nubcoomar Chukerbuttee, (Defendant,) Appellant,

*versus*

Khajah Afran Nikose Pogose, (Plaintiff,) Respondent.

RESPONDENT, proprietor of 14 annas of talook Nooroolnissa Khanum, tuppa Run Bowal, sued appellant, and others, his co-sharers, to recover rupees 526-13-3, principal and interest of revenue paid for their share of the talook in 1252, 1253 and 1254. Appellant replied that he was not liable as the estate was not about to be sold when the respondent paid the revenue; but that he was liable to be nonsuited for not having stated how much each of the defendants was in possession of, and how much was due from each; that his share consisted of 1 pie, the jumma of which was rupees 30-3-2-8, which had been paid. Respondent replied that the talook was held in joint possession, and that the sum due by each defendant could not be stated as their shares were not recorded in the collectorate.

The sudder ameen decreed against all the defendants jointly; and stating that appellant had adduced no proof what his share of the talook and its jumma was; and though according to his own statement the revenue of his share for three years was rupees 90-9-7-4, the dakhillas filed by him showed that he had paid only rupees 48-1-2.

In appeal, it was urged that respondent should, in conformity to Construction No. 849, have been nonsuited. The point for decision is, is the respondent entitled to recover the sum claimed? He clearly is so. He paid the revenue of the talook, and appellant has not adduced proof of the amount of his share and its jumma, and the Construction quoted is irrelevant. The decision of the sudder ameen is affirmed, and the appeal dismissed, with costs.

THE 3RD JANUARY 1851.

No. 185 of 1850.

*Appeal from a decision of Baboo Rajchunder Chukerbully, Moonsiff of Serajunge, dated 18th July 1850*

Talib Hossein, (Defendant,) Appellant,

*versus*

Nemychunder Seromonee, (Plaintiff,) Respondent.

RESPONDENT sued to reverse an order of the deputy magistrate of Serajunge, under Act IV. of 1840, and to obtain possession, with wasilaut, of 4 pakees of land, appertaining to the kharija talook, Ramkaunth Achar, mouza Kyra, hissa 13 gundahs, 2 cowrees, which he purchased at a sale, and states that he sued the former proprietor, Boul Achar, for some blurut land called chuck Kyrak, and obtained a decree on the 3rd September 1846, and possession through the khass ameen who measured the land, and that the appellant dispossessed him of the land contained in daghs 61, 62 and 63, of the ameen's measurement; that the deputy magistrate upheld appellant's possession of daghs 62 and 63, on the grounds, that as those daghs did not agree with the land, they must be elsewhere, and that in a dispute between appellant's father and the former proprietors of respondent's talook, an ail had been laid down as the boundary, and that he had gone to the north of it. The boundary respondent alleges to be a high bater.

Appellant, in answer, stated the land to belong to the Rajaram Surma, mouza chuck Kyrak, ha. 10 gundahs, which his father had purchased from the former proprietors; and disputes arising with the former proprietors of respondent's talook, a bater, which still exists, was laid down as the boundary by arbitrators in 1220, and the solanamah attested by the cazee, and that after the deputy magistrate had visited the spot the first time, respondent destroyed the bater, and that, if the respondent long after his decree had got it measured, it is no proof of possession, nor can it under Construction No. 744 affect him, as he was not a party to the suit.

Respondent, in reply, denied that there had ever been a solanamah regarding this land, and alleged that it had only been filled up ten or twelve years ago. The moonsiff decreed in favor of respondent, on the grounds of the khass ameen's chittah and evidence of his witnesses, and rejects the appellant's solanamah, which bears the seal of the kazee, because the date of the attestation is not recorded on it, and because he has not filed a copy of it, nor has it been attested by witnesses, the parties to it being dead; and that in some places the names of places have been re-written and torn out. That the dispute was regarding 4 gundahs, 2 cowrees, and 2 gundahs, 3 cowrees of land, but there is no dagh in the chittas filed by appellant of 2 gundahs, 3 cowrees, and that appellant's fraud is apparent, for on

being asked in which daghs the land is, he stated probably in Nos. 78 and 89, and in the kyfent of those daghs, some words are newly written. That the chittas of 1229 and 1253, have not been attested, and, therefore, no proof of his or his father's possession, and that there is discrepancy in the evidence of his two witnesses; that the deputy magistrate decided solely on the solanamah and viewing the boundaries, and has incorrectly stated that daghs 62 and 63, must be elsewhere, as, on measuring them, his and the khass ameen's measurement did not agree, but on account of the land not being straight, a like discrepancy occurred when the moonsiff measured it.

In appeal, it was urged that there are no alterations in the solanamah, or in the map, at the foot of it, of the land in dispute, and denied that the moonsiff had asked him if the lands were in daghs 78 and 89, and that they are in daghs 27 and 28 of the chittas, of 1229 and 1253, and that the copies of the chittas filed by the respondent are not attested copies. The decision of the moonsiff must be reversed. I see no reason to doubt the genuineness of the solanamah, which bears the seal of the cazee; and though the attestation is not in conformity to the present practice, such may have been the practice at that time; but whether it was or not, I am unable to ascertain, for there are no registry books of an earlier date than 1226, in the records of this court, and it was therefore impossible for appellant to file a copy of it.

As the document was drawn up about thirty-seven years ago, it is not surprising that none of the witnesses should be alive. There is no word re-written in the body of the document or in the map, on the left hand side at the foot of it, of the land now in dispute; nor any word torn out or destroyed by age affecting the case. The deputy magistrate visited the spot, and records in his roobukaree, that the ail which appellant alleges to be the boundary, still exists in some places in the middle of the nullah which divides Kyra and chuck Kyra. Respondent alleges the boundary to be a high bater on the north, but it appears from the map made by the moonsiff, that he passed a decree in respondent's favor up to the bank of the nullah which is contrary. The respondent's claim for the bank of a nullah cannot be a bater, and of the four witnesses on the part of the respondent, the first said, the north boundary was the bank of the nullah or ail bater, the second the bank of the beel, but the third and fourth, whose depositions were taken some days afterwards, make no mention of the bank or kanda, but state the boundary to be a bater. The appeal is decreed, with costs, the moonsiff's decision reversed, and the respondent's claim dismissed.

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THE 4TH JANUARY 1851.

No. 191 of 1850.

*Appeal from a decision of Muddoosoodun Barajea, Moonsiff of Attyah, dated 26th July 1850.*

Roshun Khatoon, (Defendant,) after her Edun Khatoon and others, (Appellants,)

*versus*

Janobee Chowdryne, (Plaintiff,) Respondent.

RESPONDENT sued to obtain possession, with wasilaut, of 3 pakees, 15 gundahs of land appertaining to kt. Beelchundee, in the 6 anna zemindaree, in pergunnah Cagmarree, and to kt. Koejooree, in talook No. 194, of which the appellants had dispossessed her in Assar and Bhadoon 1255, when their mouza Soobkee was being destroyed by the river, the boundary between them being a gur bater.

Appellants answered that there was no Beelchundee near the place, and that the land in dispute 4 pakees, 5 gundahs, was the jote of Akoo Mundle, in Soobkee, and stated the boundary between Soobkee and Koejooree to be a khall which flows from Pooteejanee through Soobkee, some distance to the east and north of their basa baree, and south of Mohbut Khan's house, thence east, and then south; and that Soobkee is on the south and west of it, and Koejooree on the north; that their ryots had land on three sides of that in dispute.

Respondent replied that by the force of the water in the rains where the bater had been was deepened and now looked like a nullah, and that their ryots had cultivated the land. The moonsiff decreed in favor of respondent, on the grounds of the local investigation made by the khass ameen; and although objections had been made to it by a mooktar, on the part of one of the appellants, who alleged that remarks on the part of respondent had been subsequently inserted on the map, it was not worthy of credit, for although the appellants had been directed more than a month before the decision of the suit to produce the mooktar who had been present at the investigation, they had not done so: also from the surudbundee papers of the canoogoe filed by both parties, which show the situation of respective mouzas, and from the chittas and evidence of the witnesses on the part of the respondents. In appeal, it was urged that the moonsiff had not called for proofs and laid down the points for decision as required by Act XV. 1850; that, if respondent had been dispossessed by appellants, she would have made a complaint in the fouzdaree; that the appearance of the respondent's chittas and kubooleut show that it is a false claim, and the witnesses are her defendants and low persons; that the surudbundee of their mouza was filed to show that there was no Beelchundee on any side of it; that one of the appellants filed objections to the proceedings of the khass

ameen, into which no investigation was made. I see no reason to interfere with the decision of the moonsiff. With regard to appellant's objection, that the points for decision had not been laid down as required by Act XV. of 1850, it is sufficient to state that the parties to the suit had been called upon, in the usual manner, for their proofs long before that Act was passed. There is nothing in the chittas and kubooleut of the respondent to throw suspicion upon them, and they have as venerable appearance as those of appellants, and have also been attested. The surudbundee of Beelchundee filed by respondent, shows that Soobkee is to the west of it, and cannot therefore be where the appellants assert it to be; for although the map prepared by the khass ameen does not show what mouza is to the east of the land in dispute, but from the map prepared by the moonsiff, when he proposed to remove his cutcherry from Soobkee, it appears that Bishenpore, as stated in the surudbundee papers filed by respondents, is to the eastward, and therefore the lands in dispute, which abut upon Bishenpore, must belong to Beelchundee and not Soobkee. Appellants have filed the surudbundee of Soobkee to show that Koejooree is to the east of it; that only corroborates respondent's claim, for although they point out on the map made by the ameen; that Koejooree is to the east of Soobkee, it is so only with reference to a portion of Soobkee, and not so as regards the lands in dispute. The moonsiff's decision is affirmed, and the appeal dismissed, with costs.

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## ZILLAH NUDDEA.

PRESENT : J. C. BROWN, Esq., JUDGE.

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THE 25TH JANUARY 1851.

Case No. 165 of 1850.

*Regular Appeal from a decision passed by Baboo Gourhurree Bose,  
Moonsiff stationed at Bagdah, on the 26th November 1850.*

Petumber Biswas and others, (Defendants,) Appellants,

*versus*

Sumboochunder Rai and others, (Plaintiffs,) Respondents.

THE plaintiffs' case was that the defendants had forcibly carried away the paddy crop off a piece of land, measuring 7 beegahs out of 8 beegahs, 10 cottahs, 4 chittacks, which had been settled for with them by the deputy collector, and they valued the paddy at 28 rupees.

The moonsiff, in his decree, has stated that the dispute for these lands has been going on for three years, and that the plaintiffs have not proved the grounds of their claim, inasmuch as they have not proved that the paddy was taken from 7 beegahs of land, which formed a part of 8 beegahs, 10 cottahs, 4 chittacks, which had been settled for with them by the deputy collector, and still he has given a decree in their favor for half the amount claimed by them.

On the 29th of March 1850, the moonsiff held a proceeding in which he recorded that as the plaintiffs' right to the land itself was questioned, that is, that it was stated by the defendants not to be within the boundaries which contained the land which the plaintiffs in their plaint had stated to have been settled for with them, a local investigation was necessary. He therefore deputed the ameen of the division to make the investigations. When the ameen's report was given in, the defendants objected to it. The moonsiff then deputed his seristadar, when the plaintiffs made objections. The moonsiff then at the plaintiffs' request went to the spot. It would appear by a roobukarree, dated the 16th of September 1850; that on the 20th of August preceding, the moonsiff went to the spot, and took the depositions of two men, named Nobin Doss and Alladee Mundul, and could not go on with the investigation on account of being suddenly taken ill with a headache. On the 10th of September he summoned four witnesses, and merely made inquiries regarding what land the plaintiffs had in cultivation, and passed his decree in favor of the plaintiffs' claim.



This sort of careless investigation on the part of the moonsiff is highly objectionable and unsatisfactory; for now that the case is appealed, there is no finding out the truth of the statements of either party. The proceedings themselves are very faulty; for instance no roobukarree is in the nuthee to show when or where the evidence of the two witnesses' depositions, recorded on the 20th of August, were taken.

The objections made by the parties to the local investigation, made by the ameen and the seristadar, have not been gone into and decided upon. No investigation of the plaintiffs' right to the land has been made, and the whole proceedings have been conducted in so loose and irregular a manner that they are unintelligible. Under these circumstances, I am constrained to quash the whole of the moonsiff's proceedings, and remand the suit to its original place on the moonsiff's file, and he is directed to take up the case *ab initio de novo*, and under the provisions of Act XV. of 1850, and the Circular Order of the Court of Sudder Dewanny, dated the 8th of May 1850, carefully to record the points at issue, and the proofs required to substantiate them,\* and, having made the necessary investigations, to decide the case upon its merits. The usual order to pass regarding the refunding of value of the stamp for preferring the appeal and the appellants' costs.

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THE 27TH JANUARY 1851.

Case No. 1 of 1851.

*Regular Appeal from a decision passed by Baboo Gungachurn Sircar, Moonsiff of Honskhally, stationed at Beernugger, on the 29th November 1850.*

Oomes Chunder Mullick, (Plaintiff,) Appellant,

*versus*

Calleedoss Biswas, (Defendant,) Respondent,

THIS suit was brought by the plaintiff (appellant,) to recover a bond debt from the defendant, amounting, including interest, to rupees 147, anna 1, pies 6.

The parties agreed to arbitration, and the moonsiff fixed five days for the arbitrators to give in their award. They objected to so limited a period, and requested a month might be allowed them. This the moonsiff refused, but allowed them fifteen days. About two months and a half after the expiration of the period allowed, the defendant applied to the moonsiff to recall the case, as the arbitrators had not taken any steps in it. The moonsiff accordingly recalled it, and having asked both parties if they had any more proofs to adduce in support of their allegations, and received an answer in the negative, he proceeded to dispose of the case.

He has rejected the evidence of the plaintiff's witnesses on good grounds as they were unworthy of credit, and their evidence did not prove the bond. None of them could read or write. The plaintiff could not produce any account books in which the transaction was recorded, nor did he take out a subpoena against the writer of the bond.

There was also a suspicious circumstance attendant on the evidence. The bond, and one in another suit pending on the moonsiff's file, were dated eighteen months apart, and the four witnesses who countersigned the bond in this, witnessed the bond in the other. Of them, three attended when summoned and gave their evidence in the plaintiff's favor, but in the other case, the plaintiff would not examine them, but produced two other men whose names are attached to the deed in a very suspicious manner.

The plaintiff, in his appeal, complains of the evidence of his witnesses being rejected, and of the suit having been taken out of the arbitrator's hands, but has not given any good reason for setting the moonsiff's decision aside.

I consider the moonsiff's order of dismissal of the plaintiff's claim perfectly just, because the witnesses to the bond, under which he grounds the demands, are not credible. It is therefore ordered, that the appeal be dismissed, with costs.

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THE 27TH JANUARY 1851.

CASE NO. 2 OF 1851.

*Regular Appeal from a decision passed by Baboo Gungachurn Sircar, Moonsiff of Honskhally, stationed at Beernugger, on the 29th November 1850.*

Oomesh Chunder Mullick, (Plaintiff,) Appellant,

*versus*

Cownul Nickaree, (Defendant,) Respondent.

THIS case has been referred to in No. 1, decided this day. The bond produced by the plaintiff is dated eighteen months after that in the above, and was attested by the same witnesses, but they have not been examined, only two men whose names have evidently been written subsequent to the other writing on the deed.

Of these, Bacharam is written as if in his own handwriting, but, in his deposition, he has deposed he is unable to write. This case was referred to the same arbitrators, and at the same time that case No. 1 was, and was recalled under the same circumstances.

The appeal is frivolous, and there is nothing submitted by the appellant which would justify the reversal of the order of dismissal passed by the moonsiff. Under these circumstances the appeal is dismissed, with costs.

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## ZILLAH RAJSHAHYE.

PRESENT: G. C. CHEAP, ESQ., JUDGE.

THE 17TH JANUARY 1851.

No. 68 of 1848.

*Appeal from the decision of Mr. A. DeLemos, Moonsiff of Shahzadpore, dated 29th April 1848.*

Rajkishore Bhya and others, (Defendants,) Appellants,

*versus*

Dwarkanath Tagore, after his death, Debindernath Tagore, Grindernath Tagore, and Mr. D. M. Gordon, his executors, and at present Ramanath Tagore, Chunder Mohun Chatterjee, and Muttranath Tagore, Trustees, (Plaintiffs,) Respondents.

THIS suit was before decided in appeal, but remanded by the Sudder Court as two of the pleas of the appellants, "one as to under valuation of the plaint, the other as to a bar of the action by limitation of time," had not been noticed by me; and the court remanded the case, "that the two pleas referred to might be duly considered and disposed of," (*vide* Sudder Decisions for 1850, p. 342.) The judgment of the moonsiff being in English, it may be as well to give it curtailed of a few redundancies.

"Claim 112 rupees, the estimated selling price, and 143 rupees 8 annas, profits from the 16th Maugh 1240, to the end of Pous 1252, being a period of 11 years, 11 months and 15 days, making in all 255 rupees 8 annas, to recover possession of 2 *khadas* of land appertaining to a 2 *cowree* portion of *kismut* Garadhow, dee Shahzadpore."

"The two witnesses, by name Arrudhun Pike, and Rujub *alias* Budder Pike, deposed to the service of process at the residence of the absent defendant, Kishenpershad Bhya.

"It appears from an attested copy of a petition, dated the 30th Chyete 1243, presented to the special commissioner by Baboo Dwarkanath Tagore's servants, Ram Mohun Muzmoodar and Rajkishore Bhya, (one of the defendants in the case) praying for the recovery of a portion of 2 *cowrees* of *kismut* Garadhow, dee Shahzadpore, which had been fraudulently included in the Cossipore zemindaree by Nilmonce Banerjea and others, which case was struck off for default, as shown by a copy of the proceeding, dated the 14th of March 1838; and as the vakeel of the plaintiff stated he was not

aware of this, the only inference which can be drawn from it is, that Rajkishore Bhya, the defendant in this case, in collusion with Ram Mohun Muzmadar, kept possession himself, for his own benefit. As to the amount or value of the litigated property alleged by the defendants to be worth above 300 rupees, with *mesne* profits, assuming it at the rate of 12 annas, 14 annas and 1 rupee a *pakee*: this plea was inquired into previously to entering upon any investigation of the merits of the case, but they did not produce any proof under the call of the 27th April 1846. That on proof of the rate being six annas a *pakee*, by *pottahs* and *dakhillas* granted by the *gomashtha* of the former proprietor to the *jotedars*, and evidence of five witnesses an *ameen* was ordered to make a local inquiry, before whom four witnesses adduced by the plaintiff, supported the above statement, and though six witnesses adduced by the defendants, deposed to the rate being 12 annas, 14 annas, and 1 rupee a *pakee*, their evidence is not worthy of credit. The plea that *mesne* profits for six days have not been included in the plaint set up by the defendants, is no bar to the cognizance of this suit, as the *mesne* profits cannot now be adjusted; and even had they been included, it would not infringe the stamp rules."

"Though the defendants state there are other co-sharers in the estate, who have not been made defendants by the plaintiff, (and corroborate it by copies of a decree, dated the 8th of April 1823, of a *roobakarree*, dated 31st July 1835, and an original *dakhilla*) this does not affect the complaint, as the disputed property appears to be only in the possession of the defendants, and on referring to Section 3, Regulation IV. 1790, Section 14, Regulation III. 1793, Section 3, Regulation V. 1802, Section 4, Regulation XIII. 1808, and Regulation X. 1289, Schedule B., No. 8, quoted by the defendants in their answer, none of the provisions are found to have been infringed."

"Rajkishore Bhya and others appear to have got possession of whole of the land in *kismut* Garradhow, by a decrees dated the 18th of August 1831, passed under Regulation XV. 1824, according to a map drawn by the darogah of Shahzadpore, and the disputed land, though mentioned in the said map as in possession of Bhya, yet this does not affect the plaintiffs' right and interests in the property, as the late proprietor Shibchunder Bhuttacharge was not one of the parties to the suit. Precedent Gooroopershad Gohoo and other petitioners, decided by the Sudder Dewanny Adawlut, on the 25th January 1847. See page 24.")

"The aforesaid map exhibits only the Bhya's possession to the disputed land. Whereas defendants, in their answer, say bhyas and biswas. Thus I know not what probability there could be of Shibchunder Bhuttacharge's possession. On being asked, the moonsiff explained that he meant by this that it was therefore not improbable the Bhuttacharge was in possession.

"Although the six witnesses produced by the defendants before the ameen stated that the disputed land was comprised in the defendants' talook, and that they and their co-sharers were in possession from ancient time, no reliance can be placed upon their evidence. As the copies of the takebundy of Dee Shahzadpore, prepared by the canoongoe of pergunnah Esoshye, and a lotbundy of the year 1206 show that 2 cowrees in kismut Garadhow belonged to Dee Shahzadpore, the zumindaree of Shibchunder Bhuttacharge and others, and was assessed with a jumma of 1 rupee."

"The evidence of five witnesses adduced by the plaintiffs in this court, four before the ameen, and seven others neighbouring villagers, unconnected with either of the parties, in all sixteen witnesses, two pottahs dated, respectively, the 14th and 21st Maugh 1235, and sixteen dakhillas for the years 1838-39 filed by the jotedars of the disputed land, as well as the report of the ameen and map drawn by him, prove that about two khadas of land yielding crops, appertain to the 2 cowree portion of kismut Garadhow, and is included in Dee Shahzadpore. This lies on the west of the lands of Makar-kellah, and on (*query to*) the east, north and south of the defendants' lands in the kismut, and was in the possession of Shibchunder Bhuttacharge and others, late proprietors. That in Maugh 1240 Dwarkanath Tagore purchased the Dee when sold for arrears of Government revenue; that prior to his getting possession, the defendants either at the end of Maugh, or Phalagoon 1240 B. S., included the disputed land in their kismut Garadhow; and that this proof refutes the statement made by the defendants, that no trace of the 2 cowree portion of kismut Garadhow Dee Shahzadpore is to be found."

The moonsiff then decrees for the plaintiffs, declaring them entitled to possession of 1 khada, 15 pakees and 12 canees of land under the measurement chittas of the ameen, measured according to the muckdoom's cubit, or 14 cubits, 14 finger, situate or lying as described above. Also directs that the defendants shall pay *mesne* profit from Phalagoon 1240 to the date of their making over possession, with costs, and interest on the whole, from the date of the decree to the date of its liquidation.

Mr. DeLemos, the moonsiff of Shahzadpore, being at the station on leave when the court opened after the vacation in November, the case was first taken up before him, when he was asked to explain some parts of his judgment that were not quite intelligible. After this the documents filed and evidence taken was read with a view to test his decision.

It would appear that the late Dwarkanath Tagore, the purchaser of Dee Shahzadpore, met with considerable opposition when trying to take possession of his purchase from the neighbouring talookdars and zemindars, and Government, on a representation made by the Board of Revenue, appointed first Mr. Yule, and afterwards the

late Mr. A. Turnbull to give or put him in possession. These officers were called special commissioners, and a claim was set up to a portion of land as forming the 2 cowrees share of kismut Garadhow, included in Dee Shahzadpore, assessed with a jumma of one rupee. Rajkishore Bhya seems to have been employed to conduct this complaint, which was filed by him, but failing to adduce proof or his clients' right to the land claimed, the claim was dismissed on default. The moonsiff infers that this default was wilful, as the Bhyas were *then* in possession of the 2 cowree portion to which the zemindar was entitled, and that Rajkishore would not produce the proof as against his interests. Be that as it may, the summary case could not be revived, and hence this suit, clearly instituted within twelve years from the date of the revenue sale, and to which property Dwarkanath Tagore, by purchase from the purchaser, had become entitled. The sale having been held on the 16th Maugh 1240 B. S., corresponding with the 28th January 1834, and the plaint filed on the 22nd January 1846; and even, if the defendants had got possession of the land *before* the sale, or *more* than twelve years before the suit was instituted that would not bar the present claim. As the Sudder Board, in one of their Circulars, have declared, "revenue land is hypothecated for the Government revenues," and a purchaser for arrears at a revenue sale has surely a right to sue to recover what belongs to his estates, and, if within twelve years of his purchase, the claim cannot be thrown out. In this instance it is a talookdar who has usurped the right to a portion of the talook, which the zemindar who created it, for reasons best known to himself, chose to keep, and attached to his zemindaree, and which was included in the jummaundee, or assessed at 1 rupee. The plea of the appellant that the law of limitation bars the suit, I hold, therefore, to be a bad one and must be overruled.

I now proceed to the next plea adverted to in the Sudder Court's order of remand, viz., "under valuation of the plaint." The suit is laid at the selling price of the land, calculated at a jumma of 6 annas the pakee, or for 2 khadas 120 rupees, being ten years' jumma. As the suit is to recover possession of a specific portion of an assessed estate, with a defined or fixed jumma of one rupee, it might, I conceive, have been laid at three times the sudder jumma. The plaintiffs, however, having laid their suit, "at the estimated value, or selling price, under the Sudder Court's orders, that is the question to be decided by this court in appeal. Appellants allege that the jumma of lands in their talook is 12 annas, 14 annas and 1 rupee the pakee, hence 14 annas will be the average rate; and when called upon by the moonsiff for proof of their assertion they offered none; but when a local enquiry was ordered, and an ameen appointed to make it, they brought forward witnesses who deposed to the abovementioned rates as existing. Opposed to their assertion are the pottahs and dakhillas filed by the respondents, which show

that the rent of the lands sued for was 6 annas a pakee, and the ryots, occupants of the land, were brought forward to prove this, and did so. It may also be noticed, that the moonsiff, in his decree, calls the land "crop growing," or arable land, not garden land, or adjoining homesteads; and on being asked, the moonsiff further stated that it was not likely the ryots would pay more than 6 annas a pakee for such land, as, owing to the inundation, only one crop in the year could be raised from it. Adverting to these facts, I see no reason for nonsuiting the respondents or plaintiffs for undervaluing their suit, and as the appellants had not given any proof in support of their plea *before* the moonsiff, I did not deem it deserving of notice in appeal.

The appellants' vakeel insisting that by the remand of the appeal the whole case is opened for revision, and that his clients' other pleas should be disposed of, I proceed to notice them more briefly.

One of these pleas are that the Biswases, who are shareholders in the talook, have not been made parties to the suit. In the deputy collector of Pubna's roobukarree of *mutation* of names, some seven individuals are mentioned as having been registered as joint proprietor of the talook, but if the respondents had made them parties, they would have been saddled with their costs, for in no stage of the proceedings does it appear that they objected to the suit.

And as the evidence, both before the moonsiff and ameen, clearly establishes that the land claimed is in the possession of the Bhyas, and not the Biswases, what could the latter have to do with the respondents' claim which is for a portion of a talook held by the former zemindar, and which share being in the possession of the appellants, they, and they only, were sued for its recovery. This plea, as bad, must therefore be rejected.

The last plea, and if the appellants could or would afford any assistance to the court to unravel the mesh, a very fair one, and which would make it a question whether the whole claim could be entertained, is this; that the plaintiffs claim 2 khadas of land in kismut Garadhow, as there 2 cowree share, or portion, as proprietors of Dee Shahzadpore. But if 2 khadas belonged or fell to the 2 cowree share in question of the talook, there would, or ought to be, 1280 khadas in the whole 16 annas; but as there was nothing of the kind, how could the plaintiffs, or respondents, lay claim to 2 khadas, or *nearly* that quantity be decreed to them? The appellants' vakeel was then asked "how many khadas there were altogether in the talook," but he could not reply, nor could two of the defendants who were present: one, himself a vakeel of the judge's court, and the other the serishtadar of the sudder ameen's. Now as both of these defendants were present when the case was before decided, and must have been fully aware of, if they did not advise, the presenting a petition for a special appeal, it does seem rather strange, that they can give no satisfactory answer to a question



necessarily arising from the plea they themselves put in against the plaintiffs' claim; and as they will not, or cannot afford the information sought, how can the court admit the plea as good? Two khadas, or the quantity decreed by the moonsiff, may be *more*, or they may be *less* than what would fall to the respondents, as their *fractional* share of 2 cowrees in the talook, and, if more, it may still be what the former zemindar kept, or held, when the talook was separated from his zemindaree; and if he kept a lion's share the other shareholders in the talook no doubt at the time agreed to it as a condition for the separation which made them independent talookdars. This plea therefore cannot be admitted, as there is no *data* or grounds for it shown. The revenue survey in progress may, and will no doubt, clear up many disputes as to rights and boundaries of the respective shareholders, and it will then be ascertained if the specific portion claimed by the respondents is disproportioned to the revenue paid by them for it. For the result of this investigation the case cannot be postponed, and the two pleas mentioned first, and adverted to in the Sudder Court's remand, were all this court was bound to dispose of. The appeal is therefore again dismissed, and the moonsiff's decision affirmed, and appellants will be charged with all costs.

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THE 24TH JANUARY 1851.

No. 39 of 1849.

*Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 12th November 1849.*

Gorukram Kaina, (Plaintiff,) Appellant,

*versus*

Buksheyram Sookul, (Defendant,) Respondent.

THE appellant sued to recover rupees 547, annas  $2\frac{1}{2}$ , alleged to be due by the defendant on a kuttur, or book account, for cloths purchased of the plaintiff. The principal sudder ameen dismissed the suit, and against this decision he appealed. On the 30th December last the case was taken up, when both parties consented to a reference to arbitrators, and two, Golabchand Baboo and Sookdeb Baboo, were selected by them, who have given a report to the effect that they do not consider the kuttur filed by the plaintiff or appellants genuine; that the signatures in it of the respondent's name do not appear to be those of the respondent. The signatures they compared with the respondent's entered in their own kutturs; and, further, the kuttur is in Bengali, while, among upcountry merchants, the custom is to keep their accounts in the Nagree character. In short their award is for the respondent and rejecting the appellant's claim. Nothing therefore remains but to dismiss the appeal, making all costs chargeable to the appellant.

THE 28TH JANUARY 1851.

No. 18 of 1850.

*Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 18th April 1850.*

Gopeemohun Nundee, (Defendant,) Appellant,

*versus*

Mohun Chunder Deb, (Plaintiff,) Respondent.

THE appellant was sued for rupees 393, being principal and interest alleged to be due under a bond, dated the 15th Sawun 1254 B. S. After an order was passed for the trial of the case *ex-parte*, the appellant appeared by a vakeel, but filing no answer, a decree was given in favor of the plaintiff or respondent. From this decision the appellant appeals, and after admitting the bond, pleads no consideration was given, or paid on it before he executed the same. There are other pleas which cannot now be investigated, as he allowed judgment to go by default in the court of first instance, under the Sudder Dewanny Adawlut Circular Order of the 12th March 1841, (No. 141, of volume III.) The appeal therefore, as of course, is dismissed. The parties paying their own costs, as the respondent has appeared without a notice being served upon him.

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THE 28TH JANUARY 1851.

No. 19 of 1850.

*Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 18th April 1850.*

Gopeemohun Nundee, (Defendant,) Appellant,

*versus*

Mohun Chunder Deb, (Plaintiff,) Respondent.

THE parties in this case are the same as in No. 18, decided this day. The amount due under the bond, dated the 28th Assar 1254 B. S., being rupees 394, annas 11, pies 2, and the principal sudder ameen gave the plaintiff or respondent a decree *ex-parte*. The same pleas are inserted in the woojuhat as in the other case, and for the reasons there given, cannot be now investigated. This appeal is therefore also dismissed, the parties paying their own costs.

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## ZILLAH SARUN.

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PRESENT: H. V. HATHORN, ESQ., JUDGE.

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THE 6TH JANUARY 1851.

No. 74 of 1849.

*Regular Appeal from a decision passed by Moulvee Waheedooddeen, late Moonsiff of Sewan, dated 31st March 1849.*

In the case of Bishendeal Rai, Plaintiff, Gunputlal, Noubutlal, and  
and Imritlal, Appellants, (third parties,)

*versus*

Lalla Rambunjun Singh and Ramdehul Rai, Defendants.

CLAIM for registration of name in collector's books as proprietor of 6 annas in the entire estate of Heer Pukriar, pergunnah Putchluk, in supercession of Radakishen deceased, valuation Company's rupees 129, 9 annas, 9 pie.

This suit was instituted on the 2nd September 1848, (19th Bhadoon 1255 Fusly). The defendant Rambunjun represented himself to be a 4 anna sharer in the above village, and Ramdehul, his cousin, a 2 anna sharer. They jointly executed a bill of sale for the aggregate of their shares, viz., 6 annas in favor of plaintiff, for the sum of Company's rupees 5000, and registered the deed. It is set forth that this sale was made in order to pay off certain farmers in possession for advances made by them, aggregating Company's rupees 226, of which sum Company's rupees 866 was due by Rambunjun, and Company's rupees 1400 by Ramdehul, and the balance, amounting to Company's rupees 2734, was stated to have been taken by them in cash for their own use, in the proportion of Company's rupees 2467, 5 annas, 3 pie, by Rambunjun, and Company's rupees 266, 10, annas 9 pie, by the co-sharer Ramdehul.

The purchaser admits having obtained possession of the property claimed, but states that defendants will not register his name as proprietor in the collector's books, and assigns this as the reason for coming into court. Both defendants acquiesce in the justice of the claim, and pray judgment in plaintiff's favor.

There are however *third parties* to this suit, Gunput and others, the sons of Rambunjun, who declare the property to be *ancestral*, and dispute the right of their father to alienate ancestral property in their lifetime, and without their consent, as being contrary to

Hindoo law, and several precedents (quoted) passed by the Sudder Dewanny Adawlut, and urge that the bywusteh of the divisional law officer (who was referred to) has also pronounced it to be illegal.

The moonsiff observes that the sale is admitted by the contracting parties, and the restored deeds of the former peshgidars (or farmers on advances) prove the object which induced the sale, and that the heirs of Ramdehul Singh, the co-sellers, do not object, and there is no proof of squandering away ancestral property; that the restored deeds prove that the estate was embarrassed with debt, and that the interest of father and sons in this case is identical; and if the sale by the father be reversed on the objections made by the sons, they would both save their estate and pocket the purchase money. Regarding the objections taken as deceitful, which cannot be recognized either by Hindoo law or by our courts of judicature, he accordingly decrees in favor of plaintiff, with interest, and costs of suit.

#### JUDGMENT.

This appeal was admitted on the 5th December 1850, and notice served on the respondents.

The decision of the lower court, upholding this sale, appears to be opposed both to Hindoo law (Mitacshara) as current in Behar, and to several precedents of the Sudder Dewanny Adawlut. The *sale of real ancestral property*, without the consent of heirs, is only allowable under *extreme necessity*, and unless such special and urgent circumstance be set forth and proved, the occupant is not at liberty to alienate ancestral property. The bywusteh of the divisional pundit, filed in this case, supports this interpretation of the law. Now it appears that the total debts on account of advances, &c. due by Rambunjun, amounted to 866 rupees only, and to cover which he has sold *ancestral* property to the amount of Company's rupees 3333, 5 annas, 3 pie, liquidating the above debts, and taking the remainder, viz. Company's rupees 2467, 5 annas, 3 pie, in cash for his own use. It is therefore obvious, that the sale of *one anna and half*, or at the utmost a two anna share would, at the rate of purchase, have been quite sufficient to disencumber the estate of debt amounting to rupees 866. There was no necessity for selling a 4 anna share of the ancestral property. The alienation to that extent was therefore both *unnecessary*, and *illegal*, and the objections of the sons (who were third parties in the moonsiff's court, and who have appealed to this court) should not have been thus summarily overruled, especially as their objection accorded with the bywusteh filed in the moonsiff's court. The ready acquiescence of the defendants who, immediately upon the institution of the suit, confessed judgment, indicated, of itself, an arrangement between the sellers and buyers to effect this transfer, which is to the loss and detriment of the heirs of Rambunjun. The fact of the heirs of Ram-

dehul not preferring any *objection*, is no reason for countenancing an illegal transaction, when duly represented within the period prescribed by law.

The plaintiff contends that the objection of the sons, as third parties, is not admissible: but if they whose rights are most materially affected, represent that the cause of action is founded upon an illegal alienation of their ancestral property, the courts are bound to ascertain that the law in this respect has not been infringed. I find that the sale of ancestral property to the extent mentioned in the bill of sale was quite *unnecessary*, and therefore I hold such transfer to be *illegal*. It is, therefore,

ORDERED,

That the decision of the lower court be reversed, and the claim of plaintiff be dismissed. The parties to pay their own costs.

THE 22ND JANUARY 1851.

No. 1 of 1848.

*Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 14th January 1851.*

Juttadharee Saho, (Defendant,) Appellant,

*versus*

Imritlal, (Plaintiff,) Respondent.

CLAIM, Company's rupees 1193, annas 15, on account of rent of mouza Jalalpoor, pergunnah Gooh, including interest and exchange from 1242 to 1253 Fusly.

This suit was instituted on the 2nd September 1846. Plaintiff was the proprietor of the estate, and had with his brother, Sooritlal, given a lease thereof, bearing date the 12th March 1828, to defendant's father, in consideration of an advance of Sicca rupees 1000. Two days afterwards a further advance of Sicca rupees 300 was taken upon similar terms, and a separate agreement executed. The rental (of the village) to be paid by the farmer, according to the first lease, was Sicca rupees 103, annas 8, and by the second lease was reduced to Sicca rupees 74, annas 4, which was stipulated to be paid to plaintiff annually. In February 1845, plaintiff sued for possession on behalf of himself and brother, (the brother having intermediately died) and for excess collections after deducting the *yearly rent* due to plaintiff, and amount profit due to defendant. The suit was dismissed on the 19th March 1846, on the ground that the mode of adjustment of accounts proposed, was opposed to the terms of the leases. The present suit is instituted by plaintiff to realize his yearly rent according to the terms of the lease, leaving it to be inferred that the advance has not been repaid.

The account is as follows: (the rental of six years being deducted as barred by the law of limitation.)

Thus: collections for 1242 Fusly, .....	Sicca Rupees	201
<i>Deduct</i> farmer's profit,.....	126	12
<i>Malik's rent</i> , .....	74	4
	12	years
	891	
<i>Deduct paid</i> , .....	224	
Balance,.....	667	
<i>Add</i> interest,.....	452	5
Exchange,.....	74	10
Total Company's Rupees,.....	1193	15

Defendant pleads that he has paid both the Government revenue and the malik's yearly rent, and produces eight wasil-bakees from 1242 to 1251 Fusly, and a receipt for 25 rupees for 1252 Fusly, alleged to have been granted by plaintiff, and bearing plaintiff's signature, and adverts to the length of time which has elapsed (being in excess of twelve years) since which plaintiff dates the original of his claim. He adds that plaintiff also borrowed 200 rupees on bond which still remains unliquidated. Plaintiff, in his reply, denies payment, and the execution of any other bond as alleged.

The principal sudder ameen, after drawing the issues of the case, called upon the parties for their proofs respectively, and has passed a decree in favor of plaintiff for the amount of rental claimed, with interest on the principal to date of decision, and thenceforth to date of payment on the total amount decreed. He observes that the *wasil-bakees* and receipt filed by defendant are apparently "rubbed up," in order to give the appearance of antiquity to writings newly fabricated, and that the testimony of witnesses referring to circumstances in detail which occurred years past, and betraying ignorance of matters of more recent date, is unworthy of credit; and, further, that plaintiff's alleged signature on the documents referred to, does not correspond with his signature in the deed themselves or his power of attorney filed with the record.

#### JUDGMENT.

I concur in the foregoing judgment of the principal sudder ameen. The signature of plaintiff on the wasil-bakees is altogether different from his signature on the two leases which were executed eleven years previously, and at a time when he had no reason to disguise his signature. Moreover, the yearly adjustment of accounts, and delivery of a wasil-bakee into the hands of the

defendant (the farmer) bearing the plaintiff's signature, was at variance with the terms and spirit of the contract, which simply required that defendant was to pay rupees 74, 8 annas to the plaintiff annually, and appropriate the balance himself in lieu of interest or profit upon this advance. The preparation of these wasil-bakees by the malik, who was not in possession, is therefore unaccountable, and plaintiff distinctly denied the execution of any such documents.

The delay which occurred in instituting this suit for rent, arose probably with the intention, originally, of deducting the yearly rental from the advance due by plaintiff, the proprietor; but a quarrel having ensued, the parties, as usual, flew to the court for an adjustment of their accounts. I concur in considering that the rental, as stipulated to be paid yearly, has not been liquidated. The evidence on that point is not trustworthy. No receipts are forthcoming, save one for 1252 Fusly, which does not bear the plaintiff's signature. For the above reasons, it is

ORDERED,

That this appeal be dismissed, with costs, and the decree of the lower court be affirmed.

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THE 22ND JANUARY 1851.

No. 239 of 1849. •

*Regular Appeal from a decision passed by Syed Asud Ali, late Moonsiff of Chumparun, dated 13th November 1849.*

Jootee Lal, (Defendant,) Appellant,

*versus*

Mr. G. N. Wyatt, (Factor,) (Plaintiff,) Respondent.

CLAIM, Company's rupees 168 14 annas, on account of a bond, dated 11th August 1838.

This claim is founded upon a bond for Company's rupees 173, annas 14, pie 3, with an equivalent amount of interest, total Company's rupees 347, annas 12, pie 6, admitting four payments, aggregating Company's rupees 94, annas 12, which with interest amounted to Company's rupees 84, annas 2, pie 6, the balance in favor of plaintiff being Company's rupees 168, annas 14.

Defendant at the time of executing this bond was alleged to have been the putwarry of the village Dhekaha, which was in farm to the factory at Peepra, belonging to Messrs. Nowell and Company, then under the management of Mr. Yule, and now superintended by Mr. G. N. Wyatt. Three witnesses, whose names are borne in the margin of the bond, as well as the factory treasurer, Heralal (through whom the transaction is stated to have occurred) corroborate the fact of the money having been paid into defendant's hand, and the bond executed in their presence.



Defendant denies the transaction *in toto*, stating that he was the putwarry of Dhekaha until 1255 Fusly upon a salary of Company's rupees 50 per annum, and asks why this debt was not deducted from his wages if in truth it had been incurred? He further notices that the bond is dated nearly eleven years ago, and that this suit has been preferred in consequence of a quarrel with the factory people, in 1256 Fusly, when his grandson Bydnath was imprisoned (upon a false charge) upon the prosecution of Goureesunker, the factory moonshee, and sentenced to two years' imprisonment, (reduced in appeal to one year,) and that a farming lease of the said village had been subsequently given to him, superseding the engagement with the factory; all of which he adduces as sufficient cause of enmity, and the probable reason for the fabrication of this bond.

The moonsiff considers the bond to be clearly proved, and has passed a decree in favor of plaintiff (the present factor) for the amount claimed, with costs of suit, amounting in the aggregate to Company's rupees 203, annas 2, pie 9.

#### JUDGMENT.

I find no sufficient reason for discrediting the four witnesses who, on solemn affirmation, have attested the truth of this money transaction. The claim is brought within the period prescribed by law, and the fact of defendant being the putwarry of the village, then in farm to the factory, is a probable reason for not suing until 1256 Fusly, when a dispute arose, and the plaintiff was superseded in the farm by defendant, and this action was then brought to realize the debt due to the factory from defendant. Again, I place little reliance upon the comparison of defendant's signature or handwriting as now exhibited on the record with his handwriting on the bond. It is easy to disguise one's hand, called upon to write in open court, (as defendant was) with a view to the comparison of handwriting previously denied in the pleadings; and with regard to the specious plea offered, that the debt might have been deducted, if due, from defendant's salary as putwarry, I observe, in the replication, that the salary was not paid monthly in cash, but deducted periodically by defendant himself from the collections. It is very improbable that either Mr. Wyatt, or the late Mr. Yule, (respectable indigo factors of this district) would wilfully *fabricate* a bond out of motives of enmity. For the above reasons, I uphold the decree of the lower court, and dismiss this appeal, with costs.

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THE 22ND JANUARY 1851.

No. 30 of 1850.

*Regular Appeal from a decision passed by Syed Asud Ali, late Moonsiff of Chumparun, dated 29th December 1849.*

Sunker Mahton, (Defendant,) Appellant,

*versus*

Mr. G. N. Wyatt, Factor, (Plaintiff,) Respondent.

CLAIM, Company's rupees 74, compensation on account of breach of contract as per agreement, dated 15th May 1847.

This suit was instituted on the 4th September 1849. Defendant was stated to have entered into an agreement to attend with his cart at the factory at Peepra, night and day, during the manufacturing seasons of 1255 and 1256 Fusly, and to receive hire at the usual factory rates, failing which, he was to be subjected to a fine of 8 annas per diem.

It is stated that he absented himself altogether after attending nine days only in June 1848, or 1255 Fusly, and he is accordingly charged

From 1st July to 15th October 1848, 107 days,

	at 8 annas per diem,.....	53 8 0
„	25th June to July, and four days of August 1849,	
	41 days at 8 annas per diem, .....	20 8 0

Total Company's rupees,..... 74 0 0

Defendant denies having entered into any such agreement, pleading enmity, and alleging that the claim is altogether groundless.

The moonsiff has decreed the amount claimed, with interest, as usual, to date of payment, with costs, aggregating Company's rupees 93-6-9.

**JUDGMENT.**

I find no sufficient reason to distrust the evidence adduced in support of the written agreement by which defendant bound himself to attend at Peepra factory with a cart and pair of bullocks, during the manufacturing season from 1254 to 1263 Fusly, under a penalty of 8 annas per diem. The witnesses prove that the engagement entered into was voluntary, and the absence of defendant with his cart from June, as set forth in the plaint, and the receipt produced by defendant, in proof of his attendance during 59 days of the season of 1255 Fusly, (bearing the signature of a mohurrir styled the "Haziree Novees") is denied by plaintiff, in replication, and not proved by defendant's evidence cited for that purpose. Moreover, it is improbable, as stated by defendant, that his attendance for 59 days in 1255 Fusly should be recorded, without receiving any advance, as he states, according to the custom

of the factory. Engagement for carts, under a penalty, are usual not only at Peepra, but at other indigo factories, in order to avoid the loss which might otherwise accrue by not procuring carts during the manufacturing seasons.

**ORDERED,**

That this appeal be dismissed, with costs, and the decision of the lower court be affirmed.

THE 31<sup>ST</sup> JANUARY 1851.

No. 31 of 1850.

*Regular Appeal from a decision passed by Syed Asud Ali, late Moonsiff of Chumparun, dated 29th December 1849.*

Sree Mahton, (Defendant,) Appellant,

*versus*

Mr. G. N. Wyatt, Factor, (Plaintiff,) Respondent.

**CLAIM,** Company's rupees 74, 8 annas, being the amount penalty for breach of contract, dated 15th May 1847.

This suit set forth, that defendant had taken 10 rupees advance, and entered into a written agreement, with plaintiff, to attend at Peepra factory, during the season for making indigo, with a cart and pair of bullocks, day and night, from 1254-63 Fusly, under a penalty of 8 annas per diem. It is stated that he attended with his cart in 1254 Fusly, and received his hire at the usual rates, but in 1255 Fusly, after 8 days' attendance, he absented himself altogether. Plaintiff, accordingly, claims compensation as follows:

	Co.'s Rs.
From 22nd June to 15th October 1848, 108 days	
absent, at 8 annas, .....	54
24th „ to 4th August 1849, 41 days at 8 as.,	20 8
	74 8

Defendant denies having entered into any such contract or taken any advance, but says he attended with his cart at "Dekhaha" (where he lives) and holds a receipt of attendance for seventy-four days in 1254 Fusly, signed by the Hazire Novees.

The moonsiff decrees in favor of plaintiff, and awards the amount claimed, plus 16 rupees, 4 annas, on account of costs, total Company's rupees 90, 12 annas, with interest, until paid.

**JUDGMENT.**

I find no reason to interfere in this case. The voluntary contract entered into by defendant, is sufficiently authenticated by the subscribing witnesses, and the receipt of his attendance at Dekhaha, is denied by plaintiff in his replication, and is not proved by defendant; and, moreover, it does not absolve defendant from the performance

of his contract which was to attend at *Peepra*, daily, with a cart and pair of bullocks.

I accordingly dismiss this appeal, with costs, and affirm the decree of the lower court.

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THE 31ST JANUARY 1851.

No. 32 of 1850.

*Regular Appeal from a decision passed by Syed Asud Ali, late Moonsiff of Chumparun, dated 29th December 1849.*

Telukdharry Mahtoe, (Defendant,) Appellant,

*versus*

Mr. G. N. Wyatt, Factor, (Plaintiff,) Respondent.

CLAIM, Company's rupees 74, 8 annas, on account of 1255-56 Fusly, as per contract, dated 17th May 1847.

This case corresponds, in all essential particulars, with the case preceding. The terms, period, and penalty for breach of contract were the same. Its execution, and subsequent default has been proved, and the plea of attendance at Dekhaha, does not justify his absence at *Peepra*, where attendance was required according to the terms of the agreement.

ORDERED,

That this appeal be dismissed, with costs, and the decision of the lower court be affirmed.

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THE 31ST JANUARY 1851.

No. 33 of 1850.

*Regular Appeal from a decision passed by Syed Asud Ali, late Moonsiff of Chumparun, dated 29th December 1850.*

Bodee Mahton, (Defendant,) Appellant,

*versus*

Mr. G. N. Wyatt, Factor, (Plaintiff,) Respondent.

CLAIM, Company's rupees 74, for breach of contract, dated 16th May 1847.

This suit also corresponds, in all essential particulars, with No. 31, viz. terms of contract and default, (after nine days attendance). The plea set up is also similar. I therefore confirm the moonsiff's decision which decrees Company's rupees 74, principal, and 16 rupees, 10 annas, costs; total Company's rupees 90, 10 annas, with interest, until paid.

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THE 31ST JANUARY 1851.

No. 34 of 1850.

*Regular Appeal from a decision passed by Syed Asud Ali, late Moonsiff of Chumparun, dated 29th December 1849.*

Jootee Mahton, (Defendant,) Appellant,

*versus*

Mr. G. N. Wyatt, Factor, (Plaintiff,) Respondent.

CLAIM, Company's rupees 75, 8 annas, for breach of contract, dated 16th May 1847.

For the reasons stated in the preceding cases, this decree for Company's rupees 75, 8 annas, principal, and costs Company's rupees 16, 4 annas; total Company's rupees 91, 12 annas, with interest to date of payment, is also confirmed.

THE 31ST JANUARY 1851.

No. 85 of 1848.

*An Original Suit decided by H. V. Hathorn, Esq., Judge of Zillah Sarun, dated 31st January 1851.*

(1,) Munohur Das, (2,) Musst. Luchmin, (Widow of Shewun Saho, (Plaintiffs,)

*versus*

(1,) Bhuwanee Sahaye, (2,) Thacoor Sahaye, (3,) Jechar Koer, Mother, (4,) Hunsranec Koer, Widow of Juddobuns Sahaye, (5,) Dhunnessur Sahaye, and (6,) Rugohar Sahaye, (Defendants.)

CLAIM, Company's rupees 2986, annas 10, pie 6, being the principal and interest of a bond, dated 9th Phalagoon 1246 Fusly, after deducting certain alleged payment.

This suit was instituted on the 30th August 1848. The plaint sets forth that defendants, (viz. Nos. 1, 2, 5 and 6,) and Juddobuns, borrowed Sicca rupees 2000 from Shewun Saho, on the above-mentioned date, (corresponding with 7th February 1839,) and executed a bond stipulating to pay with interest at 1 per cent. per mensem; that the money was brought from the bankers, Guncsheelal and Gopal Das, and that, after much importunity, Company's rupees 600 had been subsequently liquidated, viz., on 10th Assin 1247 Fusly (or 3rd October 1849,) through the firm of Runglal and Chedeelal other bankers, and also Company's rupees 40 had been paid in cash; that the original creditor, Shewun Das, being indebted to Munohur Das, in the sum of Company's rupees 2400, this bond had been sold to him giving other Company's rupees 400; but as it was considered necessary that the widow of Shewun Saho shall assist the purchaser in recovering the amount, she Musst. Luchmin appeared as a co-plaintiff in this suit, and for that pur-

pose, had executed a power of attorney to assist in conducting this suit in favor of Rasbeharry her agent.

Amongst the several defendants, Bhowanee Suhaye and Dhunnessur, on the 24th April 1849, admitted the justice of the claim. Thakoor Suhaye, at first, declared it to be false, and afterwards admitted it to be *true*, and the remaining three defendants *deny* the transaction *in toto*. Thacoor, on 6th January 1849, represented, in the first instance, that the claim was without foundation; that he and Juddobuns were *prisoner in the foudarry jail* at the time; that Munohar was the manager in Gunesheelal's kothee, and the entries in their account books, on his own account, were not therefore trustworthy. He also noticed that Musst. Luchmin, had, in another case, relinquished her right as heir to Shewun Saho, and could not now appear in that capacity. He, afterwards, on 11th September 1850, admitted this bond to be true, explaining that the money had been taken for the purchase of mouza Ghalibpoor, bought by the defendants who were all relations, acknowledging his own responsibility to the extent of his one-fifth share. A third defendant, Rugober, pleads that he was at Behar at the time specified, suffering from aberration of mind, which he is prepared to prove. The heirs of Juddobuns, in like manner, urge that he was in jail at the time, having been sentenced with Thacoor Suhaye, to five years' imprisonment for "affray attended with homicide."

Gopeechund and Kishenchund, sons of Soophul, and nephew of Shewun Suhaye, (one of three brothers) appear as third parties, styling themselves the heirs of Shewun, representing that the widow Luchmun had relinquished her right of inheritance, (in the case of Byjoo,) who sued his brothers, Shewun and Soophul, for his 3rd share of the ancestral property, in which case Luchmin, after applying to attest her "*warasutnamah*," had succeeded in favor of her nephew. Musst. Luchmin explains that this withdrawal of her right of succession, was effected through the roguery of her agent, when she was dangerously ill.

The principal sudder ameen (in whose court the pleadings in this case were filed, and who drew the issues of trial under the provisions of Section 10, Regulation XXVI. of 1814,) called upon the parties for their proofs in support of their respective allegations, and the case was afterwards transferred for trial to this court, under the Court's Circular, dated 14th September 1850.

These proofs have been duly filed by the parties respectively, and I now proceed to consider them *seriatim*.

#### JUDGMENT.

The bond (dated 7th February 1839,) is on stamp paper, but was not registered. It bears the names of the five principal defendants, *written by (bakulm) Rugober Suhaye*, one of the five, and bears the names of four attesting witnesses. Of these, Radabhug-

gut has since died, and Kisanaram, although cited, has not been found, and the remaining two witnesses, Hurrucknarain and Beironath, have sworn to its authenticity. It is also signed by one Sheopurshad Singh, the scribe, but he also is stated to be deceased.

The two subscribing witnesses (Hurruk and Bheiroo) affirm that they signed upon the admission of all the defendants; that it was executed in the magistrate's cutcherry compound, (now the collectorate,) and that the amount (Sicca rupees 2000) was paid to the defendant *in their presence*, and that the money was brought from Gunesheelal's "kothee" in two bags; that Thacoor and Juddobuns were *prisoners in the criminal jail* at the time, but were in the habit of coming to the foudarry court with the permission of the magistrate *to write*, although under sentence of labor; (copies of orders regarding the transit of these prisoners to, and from the jail are produced in proof thereof) and that the money was borrowed for mouza Ghalibpore, purchased by defendant.

They describe the *dress* of the two prisoners, Thacoor and Juddobuns, at the time of executing the bond; but one says that they had *no irons*, whereas they were sentenced to five years' imprisonment with labor *in irons*.

There are also three witnesses cited to demand said to have been made a few months previous to the institution of this suit.

In refutation of this, three witnesses testify to the defendant, Rugober Suhaye, being at Doudnugger, zillah Behar, and suffering from aberration of mind, when the bond was executed. It appears also strange that the merchants' books are not produced for inspection to proof any debit or credit on this account, either in proof of the money having been paid to defendant by Gunesheelal's firm on behalf of Shewun Das, or in proof of 600 rupees, having received in part payment from Runglal and Chedeelal's firm, as asserted by plaintiffs.

Thus the proof rests upon the evidence of two witnesses, Hurruk and Bheiroo, who swear to the execution of the bond, and payment of the money in their presence, but for the following reasons I cannot place implicit reliance upon their evidence.

*First.*—Their testimony was given ten and half years after the transaction took place, and yet they speak of dates, and time of day and dress of parties, and such like particulars with such accuracy as to create nothing but suspicion of falsity.

*Secondly.*—The money is said to have been brought from a banker's house, but the banker's books are not offered for inspection.

*Thirdly.*—Part payment is alleged by another bank, but here again a reference to books is not suggested.

*Fourthly.*—The party who is alleged to have executed the deed and signed for all, has proved by evidence, that he was living

at Doudnugger, in the district of Behar, at the time, suffering from partial insanity.

*Fifthly.*—Two of the defendants are clearly proved to have been, at the time mentioned, under sentence of imprisonment, with labor in irons, in the jail at Chuprah.

*Sixthly.*—The terms of the bond stipulated payment in *three months*, but this suit was not instituted for nine and half years.

*Seventhly.*—It is customary, though not imperative, to register deeds in order to give credence to their validity, and to disproof any subsequent charge of antedating or falsity, but this precaution was not taken.

It may be urged, however, that three of the defendants *admit* this claim, but as the defendants are all related, and their property probably united, the admission of three only (which may have been procured, must not be allowed to affect the joint interests of their co-partners, with whom they may have dissensions; more especially as the parties, who confess judgment, are neither of them the ostensible party who executed the deed. For the above reasons, it is

#### ORDERED,

That this suit be dismissed, with costs to be liquidated by the plaintiff Munohur Das, with exception of the expenses of the three defendants, Bhowance, Thacoor and Dhunesur, who, having admitted the claim, will pay their own costs. The third parties will also liquidate their own costs.

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## ZILLAH SYLHET.

PRESENT: H. STAINFORTH, Esq., JUDGE.

THE 27TH JANUARY 1851.

No. 164 of 1850.

*Appeal from a decision of Moulvee Mahomed Salim, Moonsiff of Souam-gunge, dated 24th August 1850.*

Pagulram Pal and Unnuntram Pal, sons of the late Soobaram Pal,  
and Bujun Dasee, widow of Jadhubram Pal, Appellants,

*versus*

Birjooram Chunder, Respondent.

**RESPONDENT** sued under a bond at 30 days' sight, for rupees 15, with interest, dated 15th Assar 1244 B. S.

Appellants' defence was that the bond was taken compulsorily by Jugmohun Rai, in respondent's name, to prevent Soobaram and Jadhubram, from leaving the joint estate of Mahomed Ameen and Jugmohun, and proceeding to separate estate of the former; and that respondent had preferred the suit on account of a quarrel between the parties.

Bujun Dasse, Madhub Ram, and Oodhub Ram filed an answer supporting that of appellants, and denying that Madhub and Oodhub are heirs of Jadhubram.

The moonsiff (Moulvee Mahomed Salim) rejected the evidence of appellants' witnesses; and, holding the transaction declared by respondent proved, decreed against appellants and Bujun Dasee, and such of the estate of Jadhubram as in the possession of Madhub and Oodhub.

Appellants now urge, among other matters, that the witnesses say that no money passed in their presence; that their defence is proved by the evidence of the draftsman of the bond, and their witness Doorga Ram, who are supported by the other three witnesses; and that the claim is not proved.

### JUDGMENT.

It is clearly shown that respondent was the servant of Jugmohun Rai, who has admitted that a bond was taken without consideration from Ooberam and Jadhubram, to prevent them from leaving his (Jugmohun's) estate. Respondent's witnesses say that money did not

pass before them; and, on the whole, I give credence to the testimony of appellants' witnesses showing that the bond was extorted.

IT IS, THEREFORE, ORDERED,

That the decree of the moonsiff be reversed, and that suit be dismissed, with costs.

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THE 27TH JANUARY 1851.

No. 184 of 1850.

*Appeal from a decision of Baboo Hergouree Bose, Moonsiff of Russool-gunge, dated 21st September 1850.*

Munneeram Das, Appellant,

*versus*

Sheikh Pakaye Mundul, Sheikh Chand Mundul, Sheikh Nuthoo, Sheikh Eedoo, and Sheikh Rajoo, Respondents.

RESPONDENTS averred themselves tenants in talooka 100, in the name of Benode Rai, and talooka 101 in the name of Kaleepershad, and stated that appellant obtained a decree under Regulation VII. of 1799, and realized from them rupees 35, under pretence of their being tenants, under written engagement in his lakhiraj tenement, and defaulters for the rent on account of 1255; and they now sue for recovery of the said sum, with their own costs, and interest.

Appellant stated, in answer, that respondents were tenants and paid rent in 1253 and 1254, without having executed any written agreement to do so; that they tenanted the land in 1255, and, on the 10th of Sawun of that year, executed a kubooleut, or agreement to pay rent; that, though respondents claimed the land on the lakhiraj measurement as part of the talooka No. 100, the settlement made with appellant remains unreversed, and is the subject of an appeal now pending; that Sheikh Eedoo, Sheikh Nuthoo, respondents, with Jungee Mundul and others, executed a kubooleut for the same land in 1256, which has been attested by the kazeer.

The moonsiff (Baboo Hergouree Bose) held the alleged payment under the decree proved, and decreed the claim, setting aside the evidence of appellants' witnesses, because of discrepancies, and observing that the kubooleut had not been filed, and that it was not customary to execute kubooleuts, in Sawun, with other matter.

Appellant now urges that the discrepancies alleged by the moonsiff do not exist; that he filed the kubooleut, and proved it in the summary suit; that he recovered it, and filed it in the record of the case of the settlement of the land, which has been taken into the interior of the district by the deputy collector; and that he therefore could not file it in this suit, but had received a copy from the collectorate and was about to file it, but found that the case was decided: and he adds that he did not take a kubooleut before 1255,

because he had himself an interest in talookas Nos. 100 and 101, which he has since disposed of.

### JUDGMENT.

The issue of this case depends on whether credit can be given to the kubooleut. I put no faith whatever in it, for I think it extremely improbable, under the circumstances stated in appellant's answer, that respondents executed such a document, the date, month and year of which, I observe, are not given in appellant's plaint, in the summary suit, and which the subsequent registration of a similar document in 1256, if it occurred, can only render still more improbable. Under these circumstances, I see no cause for interference.

IT IS, THEREFORE, ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

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THE 27<sup>TH</sup> JANUARY 1851.

No. 192 of 1850.

*Appeal from the decision of Baboo Sharodapershad, Moonsiff of Ajmereegunge, dated 11th September 1850.*

Sidee Dasee, Appellant,

*versus*

Chunder Munnee Shah and others, Respondents.

RESPONDENTS stated that Nittaye Shah, gomashta of the late Kishen Shah, husband of appellant, took goods for their store on behalf of Kishen Shah, and sold them; that an examination of account took place on the 2nd Kartick 1244, when 11 rupees, 13 annas, 3 gundahs, 3 cowries was found to be due, and the gomashta signed the account book for this sum for which the present suit is brought; and they noticed that they had previously instituted a suit on the same ground of action in which Nittaye had confessed judgment, but in which they were nonsuited.

Appellant filed an answer denying *in toto*, and pleading that Nittaye and others took money and goods from Kishen Shah and traded with the same, and that there is still some money due to her from them; and that had Kishen Shah dealt with respondents, the latter would hold his notes of hand, &c. &c.

The moonsiff (Baboo Sharodapershad) held the claim proved by respondents' witnesses, and their account books, and decreed accordingly.

Appellant now controverts the view taken by the moonsiff, and pleads that Nittaye's account books should have been sent for.

## JUDGMENT.

I think the account books of Nittaye should be examined, in order that it may be ascertained whether he acted on behalf of Kishen Shah or on his own account.

## IT IS, THEREFORE, ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for disposal, with reference to the foregoing remark. The price of stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to the remaining costs of appeal.

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THE 27TH JANUARY 1851.

No. 193 of 1850.

*Appeal from a decision of Moulvee Toofail Ahmud, Moonsiff of Latoo, dated 28th November 1850.*

Hurreepershad Sein and Gobindram Sein, Appellants,

*versus*

Shadaram Das and others, Respondents.

THIS suit was for the value of the produce of 2 kears sown with mustard. Respondents stated that the crop was sown by them on land bought by them, while appellants averred long possession.

The moonsiff, Moulvee Toofail Ahmud, decreed the claim on the evidence of three witnesses.

Appellants urge, among other matters, that they instituted a suit under Act IV. of 1840, for the land of the crop in suit, which has resulted in their favor, and they pray that the record be sent for.

## JUDGMENT.

I find that appellants prayed that the record of the case, under Act IV. of 1840, should be sent for from the foudary court, and that the moonsiff did not deem it necessary to do so; but I think that he should have done so, and that, had there been no decision under Act IV. of 1840, this is a case to which local investigation was a legitimate and proper mode of inquiry into the merits of the case, quoad the question of possession.

## IT IS, THEREFORE, ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for decision, with reference to the foregoing remarks. That the price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to the remaining costs of appeal.

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THE 31ST JANUARY 1851.

No. 1 of 1851.

*Appeal from the decision of Baboo Hergouree Bose, Moonsiff of Russoolgunge, dated 9th December 1850.*

Runjeet Patnee, Appellant,

*versus*

Radeeka Domunee, Respondent.

RESPONDENT sued for 60 rupees damages, in consequence of an aspersion of illicit intercourse with her husband's brother's son-in-law.

Appellant resisted the claim, and pleaded that the intercourse really took place, &c.

The moonsiff (Baboo Hergouree Bose) found the plea in defence not proved, while proof of respondent being a person of good reputation was established, and he gave her a decree of 10 rupees.

Appellant now urges that respondent would not have been communicated by persons of her caste had she not been guilty; that he, appellant, is not declared to have entertained enmity against her; and that the complaint of Hurree Patnee, in the foudaree court, had been adjusted by complainant being satisfied, because its failure was foreseen.

#### JUDGMENT.

Appellant has not justified the aspersion which he is proved to have made, and respondent, who is sworn to be a person of good character, must be presumed to have been injured by it. Under these circumstances, I see no ground for interference.

IT IS, THEREFORE, ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 31ST JANUARY 1851.

No. 3 of 1851.

*Appeal from a decision of Baboo Ram Taruck Rai, Moonsiff of Lushkerpoor, dated 5th December 1850.*

Pundit Ram Rooderpal, Appellant,

*versus*

Chytun Nath, Respondent.

RESPONDENT sued for rupees 3, with interest.

Appellant pleaded payment under a receipt.

The moonsiff (Baboo Ram Taruck Rai,) decreed the claim, setting aside the receipt, on the ground that it was at variance with appellant's statement, and the evidence of his witnesses: the first setting forth payment *with interest*, and the defence, and witnesses, alleging the *remission of interest*.

Appellant urges that his defence is proved, but I think the discrepancy fatal to reliance on the receipt, and concur in the propriety of the moonsiff's decree.

**IT IS, THEREFORE, ORDERED,**

That the decree of the moonsiff be affirmed, and the appeal dismissed, with costs.

**THE 31ST JANUARY 1851.**

**No. 21 of 1851.**

*Appeal from a decision of Moulvee Toofail Ahmud, Moonsiff of Laloo, dated 18th December 1850.*

Jentee Ram Das, Appellant,

*versus*

Kishwuree Debea, Respondent.

APPELLANT sued for the hire and price of a mutka, a large earthen vessel, lent to respondent's late husband, on the 15th Bhadoon 1250.

Respondent denied the truth of the claim, and pleaded that appellant's brother and her late husband were in partnership, and that the former left a mutka, of value 8 annas, in her golah or store, which is there now.

Appellant replied that the suit was not for his brother's mutka.

The moonsiff, Moulvee Toofail Ahmud, held the evidence adduced by appellant, insufficient to support the claim, and on this and other grounds, dismissed the suit.

Appellant now urges that the evidence of his witnesses is consistent; that four witnesses came before the moonsiff of Parkool in order that their evidence might be taken under commission, but that their testimony was not taken, because the place of the residence of one of them was wrongly stated; and that a petition was presented that their evidence should be taken, to which the moonsiff did not attend.

#### **JUDGMENT.**

The record shows that the commission received by the moonsiff of Parkool, on the 20th May, was returned by him on the 24th August, on account of appellant's not having caused the attendance of three out of four witnesses, and the description of the fourth, quoad his place of residence, being erroneous. No petition is extant as averred by appellant, and his witnesses only speak to knowledge, the mutka having been brought out of appellant's house for the purpose of being lent. Under these circumstances, I see no ground for interference.

**IT IS, THEREFORE, ORDERED,**

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

## ZILLAH TIPPERAH.

PRESENT: T. BRUCE, ESQ., JUDGE.

THE 11TH JANUARY 1851.

CASE NO. 13 OF 1850.

*Regular Appeal from a decision of Cazeer Mahomed Ali, Principal Sudder Ameen, dated 6th May 1850.*

Ramsoonder Mozumdar and others, (Plaintiffs,) Appellants,

*versus*

Mahomed Haneef and others, (Defendants,) Respondents.

SUIT laid at Company's rupees 4998-1.

This is a suit for possession of droons 2-9-13-1-1 of land, with mesne profits from date of dispossession.

The plaintiffs appear as proprietors of a dependant tenure (a hawala) subordinate to a rent-free tenure.

The principal defendants appear as proprietors of a dependant talook, acquired at a sale in execution of a decree, under Regulation VII. of 1799.

The lower court dismissed the claim, on the ground that suit is barred by lapse of time, upwards of twelve years having elapsed from the date of the sale prior to the institution of the suit.

I am of opinion, however, that this is an erroneous application of the law of limitation, and that time should be calculated not from the date of the sale, but from the date of the alleged act of dispossession, which would bring the suit within time. The purchase of the talook is not impugned, but only the right of the purchasers to possession of a portion of the land formerly in the occupation of the plaintiffs.

I therefore annul the decision of the court below, and remand the case, without summoning the respondents, for investigation on the merits.

The usual order will issue for the refund of the value of the stamp on which the petition of appeal is written.



THE 11TH JANUARY 1851.

Case No. 20 of 1850.

*Regular Appeal from a decision of Cazee Mahomed Ali, Principal Sudder Ameen, dated 22nd July 1850.*

Nubkishen Rai and Rajkishen Rai, (Plaintiffs,) Appellants,

•  
*versus*

Zeebonnissa and others, (Defendants,) Respondents.

SUIT laid at Company's rupees 1339-11-11.

This is a suit for an adjustment of rent, and for arrears of rent, at the rate to be determined by such adjustment.

The court below dismissed the claim, on the two following grounds : first, that suit was barred by lapse of time, more than twelve years having elapsed, subsequently to the plaintiffs becoming proprietors of the zemindaree in which the land is situated, before they instituted the present suit : and, secondly, because the notice issued by the plaintiffs, under Section 9, Regulation V. of 1812, did not specify the names of all the parties in possession, and was issued in the name of a party since deceased.

With regard to the former of these reasons, it is sufficient to state that it has repeatedly been held by the Sudder Court, that the law of limitation is not applicable to a suit for an adjustment of rent ; and that arrears of rent for a period not exceeding twelve years may be adjudged, even although a plaintiff admit that arrears due to him extend over a longer period.

With respect to the second reason, I have to observe that it ought not to have been considered or entered upon, if the court thought that the investigation was barred by lapse of time. As however an opinion has been given upon the point involved in it, and as I consider the opinion so given to be erroneous, it is incumbent on me to state that such is the case, before I remand the suit, in order that the parties to it may not incur any unnecessary expense, by having hereafter to appeal on a point already decided by the court below. It has been determined by the Sudder Court, page 261, volume 7, Select Reports, that a notice issued under Section 9, Regulation V. of 1812, is not vitiated by the omission of the names of all the parties in possession, it being sufficient to specify the names of those recorded as such in the zemindar's office, and, as at the time the notice was issued, the party named in it was alive, I cannot admit that his decease, subsequently thereto, vitiated it, the parties now sued being his heirs.

Under these circumstances, I annul the decision of the court below, and remand the suit, without summoning the respondents for investigation, *de novo*.

The value of the stamp on which the petition of appeal is written will be refunded.

THE 15TH JANUARY 1851.

Case No. 21 of 1850.

*Regular Appeal from a decision of Cazee Mahomed Ali, Principal Sudder Ameen, dated 19th August 1850.*

P. Delauney and others, (Plaintiffs,) Appellants,

*versus*

Mahomed Munwar and others, (Defendants,) Respondents.

SUIT laid at Company's rupees 1046-13.

This suit was instituted, on the 26th March 1850, to resume an invalid rent-free tenure.

The court below dismissed the claim, on the ground that the cause of action was the same as in a suit dismissed by the same court, on the 7th June 1849.

An appeal is preferred by the plaintiffs, on the ground that the cause of action in the two suits is different, and not the same, and I am of opinion that the plea is good.

The former suit was not brought, as is the present one, to resume an invalid rent-free tenure. It was brought to recover possession of land, the rent of which had for a given number of years, been fraudulently withheld from the plaintiffs; and the plaintiffs having failed to establish their case, the suit was dismissed.

The land, in the two suits, may be identical, but that is nothing to the point. The plaintiffs having failed to prove that it formed a part of their rent-paying estate in one suit, it is clearly optional with them to try the validity of the tenure in another. The latter point has never yet been determined by the court.

I annul the decision of the court below, without summoning respondents; and remand the case for investigation *de novo*, on the principle indicated above. The value of the stamp on which the petition of appeal is written will be refunded.

THE 15TH JANUARY 1851.

Case No. 22 of 1850.

*Regular Appeal from a decision of Cazee Mahomed Ali, Principal Sudder Ameen, dated 19th August 1850.*

P. Delauney and others, (Plaintiffs,) Appellants,

*versus*

Ekramooddeen Khonkar and others, (Defendants,) Respondents,

SUIT laid at Company's rupees 540-9-0.

The circumstances of this case are in every respect similar to those of case No. 21 of 1850, decided this day. A similar order will issue.

THE 17TH JANUARY, 1851.

Case No. 24 of 1850.

*Regular Appeal from a decision of Cazee Mahomed Ali, Principal Sudder Ameen, dated 17th September 1850.*

Kalachand and another, (Plaintiffs,) Appellants,  
*versus*

Obheya and another, (Defendants,) Respondents.

SUIT laid at Company's rupees 1066-10-8.

This is an action for the refund, with interest, of the purchase money paid by plaintiffs to the defendant, Obheya, for two talooks, the sale of which was subsequently cancelled by the civil courts, and declared void *ab initio*, as having taken place in opposition to the requirements of the Hindoo law.

The court below dismissed the claim, on the ground that the purchasers must have known, at the time they made the purchase, that it was illegal; it being matter of a notoriety that the sale of landed property by a widow, during the lifetime of her son, is prohibited.

The merits of this particular case, however, were not considered. The court deemed it superfluous to enter upon them. It assumed that the parties to a transfer of such a nature, must necessarily have known that they were doing that which was illegal, and on this assumption, and because there was no order for the refund in the case in which the sale was cancelled, the claim was dismissed.

Now, I am of opinion, that much more than this was demanded by the circumstances of the case, and that the court ought to have been guided mainly by the Hindoo law. It ought in the first place, to have ascertained from the pundit, whether, under that law, a purchaser has his remedy against the vendor, in the event of the sale being declared illegal by a competent court, on the ground that the vendor had not the power to sell. Had this question been answered in the negative, the claim should have been dismissed, without any further investigation: but if in the affirmative, it would then have remained to be determined by reference to the pundit, if necessary, whether the circumstances of this particular case were such as to bar the application to it, of the general law.

It is to be observed, that the presumption, *prima facie*, is against the principal sudder ameen's assumption, inasmuch as one would imagine, that, if the plaintiffs had knowingly done an illegal act, they would have had the precaution to make it appear legal, so far as in them lay, by having it recorded in the bill of sale, that the requirements of the Hindoo law, which would have made the transfer legal, had been complied with; but no such record appears in it.

The case having been decided without sufficient investigation, I annul the decision of the court below, and remand the suit for investigation, *de novo*, on the principle, and in the mode indicated

above. The value of the stamp for the petition of appeal will be refunded.

THE 17TH JANUARY 1851.

Case No. 27 of 1850.

*Regular Appeal from a decision of Caze Mahomed Ali, Principal  
Sudder Ameen, dated 6th September 1850.*

Mahomed Wassilooddeen, (Defendant,) Appellant,

*versus*

Oomdah Dibya, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 2730.

This is an appeal from an *ex-parte* decision, the defendant (appellant) having failed to appear within the time limited in the proclamation for his attendance, and the reasons assigned by him to show that his default was not wilful, having been rejected by the court below.

I am of opinion that the defendant's pleas of illness, and of the attachment of his person in execution of a previous decree, after it had accidentally become known to him that the present suit had been instituted, were properly rejected by the principal sudder ameen; but I am also of opinion, that the principal sudder ameen ought to have inquired into the truth or otherwise of the defendant's plea, that neither the notice nor the proclamation for his attendance had been duly issued, and that such would be proved by the examination of the witnesses named in the certificates of issue of process filed in the case.

Under these circumstances, I am compelled to annul the decision, and remand the case for the investigation of the above point; and in the event of the plea being established, for the investigation of the suit on its merits, *de novo*.

The value of the stamp on which the petition of appeal is written will be refunded.

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## ZILLAH TIRHOOT.

PRESENT : THE HONORABLE ROBERT FORBES, JUDGE.

THE 15TH JANUARY 1851.

No. 390 of 1850.

*Regular Appeal from a decision of Moulvee Abool Burkat, Moonsiff of Durbhungah, dated 18th July 1850.*

Shamlall Misser and three others, (Plaintiffs,) Appellants,

*versus*

Luchoo Koormee, (Defendant,) Respondent.

THE plaintiffs, as maliks of Buchnoogunge, in the town of Durbhungah, claimed from the defendant the sum of Company's rupees 12-4-3, principal and interest of kutyarree, or building ground-rent, from 1253 to 1256 F. S., at the yearly rate of rupees 2.

The defendant pleaded that since 1252 F. S., he has occupied a single house on the property of the plaintiffs, and one Baboolall Misser, at the yearly rate of 6 annas, there being in the said gunge three established rates, viz., 6, 5 and 4 annas; that at the rate of 6 annas per annum, the total payable by him from 1252 to 1256 F. S., was rupees 1-14, out of which he had paid 12 annas through one Beharee Punjcear, in Falgoon 1256 F. S., but the plaintiffs on the plea of there being a balance of rupees 1-2, refused to give him a receipt. The case has been revengefully got up against him by Baboo Lall Misser, through the instrumentality of his brothers.

The moonsiff did not hold the proceeding enjoined by law for the determination of issues, but recording his opinion that, though the plaintiff's witnesses have deposed in support of their allegations yet, as the defendant appeared to occupy but one small house without any land or premises attached to it, on which any produce could be grown, he gave the plaintiff a decree for rupees 1-8 only, being the rate stated by the defendant for the four years sued for, the latter having failed to produce any acknowledgment of the alleged payment of 12 annas.

The grounds of appeal are that the moonsiff does not state in his decision that he had personally visited the spot, and that the defendant is still in possession of a regular compound with trees in it, the yearly rate of payment for which has been proved by four witnesses to be rupees 2.

### JUDGMENT.

The moonsiff's decision is faulty and unsatisfactory : *first*, because he failed to record the proceeding for the determination of issues

enjoined by law ; and, *secondly*, because, while the plaintiff contended that the defendant had a large compound in his possession with trees in it, the moonsiff does not state in his decision how he ascertained that the defendant occupied only a small house, though such information appears to have been elicited by cross-examining the defendant's witnesses.

The moonsiff too ought either to have gone himself to the place, which is evidently at no great distance from his own cutcherry, or have deputed an officer or ameen to satisfy himself fully on a point on which the whole case hinges.

I reverse the decision of the moonsiff, and remand the suit to him to be re-tried, with advertence to the above remarks, and with the issue of the customary order for refunding the value of stamp paper.

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THE 22ND JANUARY 1851.

No. 411 of 1850.

*Regular Appeal from a decision of Moulvee Munneerooddeen Hossein, Moonsiff of Muhwa, dated 22nd July 1850.*

Bikram Lall and Bujrungee Suhye, (Plaintiffs,) Appellants,

*versus*

Meetun Mahtoo and another, (Defendants,)

Khadim Hossein and two others, third Parties, (Respondents.)

THE case immediately preceding this, No. 410, and 6 others which follow, Nos. 412, 413, 414, 415, 416 and 417, are appeals from decisions in 8 suits, of which 3 were instituted by the maliks of the 8 anna share of a certain tolah against their thikadars and kashdars for alleged arrears of rent, the other 5 suits also against ryots for the same object being preferred by others also claiming a proprietary right to other land in the same tolah. The cause of action being therefore the same, all the suits are brought on for hearing together. The decision of the rest hinging upon the judgment accorded in this case.

The plaintiffs sued, in this case, to recover Company's rupees 12-3, principal and interest of alleged arrears of farming jumma for the year 1255 F. S. from the defendants Meetun Mahtoo and another, as thikadars of the 4 anna share of tolah Tundispore, attached to mouza Russoolpore Kumrawah, pergunnah Surrea, calculating their claims agreeably to the wasil-bakee accounts signed by the defendants.

The two thikadar defendants, admitting the thika engagement, pleaded that only 6 rupees remained due from them.

Khadim Hossein and three others, coming forward as 3rd parties, urged that half of the tolah in question was theirs and their copartners, the other half being the property of the heirs of Beera

Chowdry, and that the plaintiffs having objected, at the time of measurement by the survey ameen, claiming by right of a "hibeh-bil-ewuz," or gift for a consideration, said to have been given by their (the 3rd parties) ancestors, the objections of the plaintiffs were overruled, and a decision passed in their (the 3rd parties) favor.

To this the plaintiffs rejoined that half the tolah under litigation, was the mokururee property of Beera Chowdry, the other half having by a "hibeh-bil-ewuz," or gift for a consideration, executed by the ancestors of the 3rd parties, came into the possession of their (plaintiffs') ancestors, and after the death of the latter, 4 annas fell to them (plaintiffs,) and 4 annas to Ooma Dyal, their cousin, their connection with the disputed tolah being established by a proceeding of the resumption department, under Regulation II. of 1819, dated the 25th June 1840. They, further, urge that the mere circumstance of their (plaintiffs') names not being found in the measurement khusreh, cannot be enough to deprive them of their just rights.

In support too of the plaintiffs' statement, a petition was presented by Ooma Dyal.

The moonsiff dismissed this and the two other suits in which the appellants were plaintiffs, decreeing the five in which Khadim Hossein and others (the 3rd parties in this suit) were plaintiffs. He found that the names of the plaintiffs' ancestors were not inserted in the measurement khusreh of the division made by the collector, while the possession and hereditary proprietary right of Khadim Hossein and others was apparent from the decision of the moonsiff of Dulsing Scrai, of the 31st August 1843, in the suit of Beera Chowdry *versus* Becchok Raee, and from the copy of the chowky-darree register for 1844, and other papers, the moonsiff observing that the mere mention of the plaintiffs' names with those of the defendants in the proceeding, under Regulation II. of 1819, was not sufficient proof. Moreover, it appeared from the two proceedings of the foudarry court of the 10th December 1849 and 17th May 1850, that the plaintiffs having, with a view to their own taking possession, given a thika farm of the 4 anna share of the tolah to the Kewtali factory, the complaint of the latter was dismissed. Besides which, the survey roobukaree of the 28th April 1848, while it does not show the connection and possession of the plaintiffs and Ooma Dyal, does establish both the possession and proprietary right of Khadim Hossein and others. The moonsiff concluded by remarking that he did not record a proceeding under Section 10, Regulation XXVI. of 1814, because proofs had been filed before his receipt of Act XV. of 1850.

Appealing from that decision, the plaintiffs represent that the khusreh of 1207 F. S., took place agreeably to the petition of Beera Chowdry, and by order of the court, and cannot therefore prejudice them (appellants) as "shikmee" sharers; that the moonsiff's decision



alluded to, had special reference to the land of mouza Kumrawah itself, and not to that of the tolah in dispute; that in the chowkey-daree register, it is the name of the sudder malgoozar which is always inserted; and that in the resumption court, these very third parties were defendants jointly with their brother, Hunooman Suhye, and without offering any opposition to their (appellants') claim. They, further, urge in reference to the order of the 25th of June 1850, for releasing the property which upheld both their proprietary right and the mokururee, that that order applied to all who were defendants, and that in the collector's putteedaree register for 1217 F S., their father's name is entered; that so much of the proceeding of the foujdary court of the 10th December 1849, as set forth their (appellants') having no connection with the property, was modified in appeal: and, lastly, that the order of the deputy collector of survey, which disallowed their "hibeh-bil-ewuz" and other documents, was reversed by the superintendent.

#### JUDGMENT.

This, and the cases connected with it, were all decided by the moonsiff without his holding the proceedings enjoined by law for determining the issue or issues in the mode prescribed, notwithstanding of the prior promulgation both of the law itself, and the Circular Order of the Sudder Court, No. 8 of 1850, by which the observance of the law on this point is particularly enjoined and enforced.

The reason assigned by the moonsiff for not complying with the law, to the effect that proofs had been filed, is insufficient; because the proceeding under Section 10, Regulation XXVI. of 1814, is not for the purpose of calling for proofs, but of determining the issues on which proofs should be required.

Reversing the moonsiff's decision in each, I remand the suits to him for re-trial, with the usual order for returning the institution fee.

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THE 22ND JANUARY 1851.

No. 410 of 1850.

*Regular Appeal from a decision of Moulvee Munneerooddeen Hossein, Moonsiff of Muhwa, dated 22nd July 1850.*

Bikrum Lall and two others, (Plaintiffs,) Appellants,

*versus*

Ram Dyal Mahtoo, Defendant, Khadim Hossein, and two others, third parties, (Respondents.)

SUIT to recover Company's rupees 1-11-6, and something more, principal and interest of alleged arrears of rent of 2 beegahs, 17 cottahs, 8 dhoors of land in cultivation, situate in tolah Tundispore,

attached to mouza Russoolpore Kumrawah, pergunnah Surrea, for 1256 F. S.

### JUDGMENT.

The decision recorded in the suit preceding, equally applies to this case. The order of the moonsiff is reversed, and the suit remanded to him for re-trial, with the usual order for returning the institution fee.

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THE 22ND JANUARY 1851.

No. 412 of 1850.

*Regular Appeal from a decision of Moulree Munneerooddeen Hossein, Moonsiff of Muhwa, dated 22nd July 1850.*

Ooma Dyal and two others, (Plaintiffs,) Appellants,

*versus*

Dewun Mahtoo and one other, Defendants, and Khadim Hossein and two others, third parties, (Respondents.)

SUIT to recover Company's rupees 15-12-9, and something more, principal and interest of alleged arrears of rent of 6 beegahs, 2 cottahs and 4 dhoors of land in cultivation, situate in tolah Tundispore, attached to mouza Russoolpore Kumrawah, pergunnah Surrea, for 1256 F. S.

### JUDGMENT.

The decision recorded in the suit No. 411, equally applies to this case. The order of the moonsiff is reversed, and the suit remanded to him for re-trial, with the usual order for returning the institution fee.

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THE 22ND JANUARY 1851.

No. 413 of 1850. •

*Regular Appeal from a decision of Moulree Munneerooddeen Hossein, Moonsiff of Muhwa, dated 22nd July 1850.*

Bikram Lall and two others, Appellants, (third parties,)

*versus*

Khadim Hossein and two others, (Plaintiffs,) and Goordyal Mahtoo, (Defendants,) Respondents.

SUIT to recover Company's rupees 6-5-3, and something more, principal and interest of alleged arrears of rent of 4 beegahs, 15 cottahs of land in cultivation, situate in tolah Tundispore, attached to mouza Russoolpore Kumrawah, pergunnah Surrea, from 1244 to 1256 F. S.

## JUDGMENT.

The decision recorded in the suit No. 411, equally applies to this case. The order of the moonsiff is reversed, and the suit remanded to him for re-trial, with the usual order for returning the institution fee.

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THE 22ND JANUARY 1851.

No. 414 of 1850.

*Regular Appeal from a decision of Moulvee Munneerooddeen Hossein, Moonsiff of Muhwa, dated 22nd July 1850.*

Bikram Lall and two others, Appellants, (third parties,)

*versus*

Khadim Hossein and two others, (Plaintiffs,) and Boodhoo Maltoo and one other, (Defendants,) Respondents.

SUIT to recover Company's rupees 1-5-6, and something more, principal and interest of alleged arrears of rent of 11 cottahs, 13 dhoores of land in cultivation, situate in tolach Tundispore, attached to mouza Russoolpore Kumrawah, pergunnah Surrea, from 1250 to 1256 F. S.

## JUDGMENT.

The decision recorded in the suit No. 411, equally applies to this case. The order of the moonsiff is reversed, and the suit remanded to him for re-trial, with the usual order for returning the institution fee.

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THE 22ND JANUARY 1851.

No. 415 of 1850.

*Regular Appeal from a decision of Moulvee Munneerooddeen Hossein, Moonsiff of Muhwa, dated 22nd July 1850.*

Ooma Dyal and two others, Appellants, (third parties,)

*versus*

Khadim Hossein and two others, (Plaintiffs,) and Sheikh Shoojah, (Defendants,) Respondents.

SUIT to recover Company's rupees 5-8-3, principal and interest of alleged arrears of rent of 3 beegahs, 14 cottahs of land in cultivation, situate in tolach Tundispore, attached to mouza Russoolpore Kumrawah, pergunnah Surrea, from 1254 to 1256 F. S.

## JUDGMENT.

The decision recorded in the suit No. 411, equally applies to this case. The order of the moonsiff is reversed, and the suit remanded to him for re-trial, with the usual order for returning the institution fee.

THE 22ND JANUARY 1851.

No. 416 of 1850.

*Regular Appeal from a decision of Moulvee Munneerooddeen Hossein,  
Moonsiff of Muhwa, dated 22nd July 1850.*

Ooma Dyal and two others, Appellants, (third parties,)

*versus*

Khadim Hossein and two others, (Plaintiffs,) and Dewun Mahtoo and  
one other, (Defendants,) Respondents.

SUIT to recover Company's rupees 6-6, and something more,  
principal and interest of alleged arrears of rent of 6 beegahs, 18  
cottahs of land in cultivation, situate in tola Tundispore, attached  
to mouza Russoolpore Kumrawah, pergunnah Surrea, from 1254  
to 1256 F. S.

JUDGMENT.

The decision recorded in the suit No. 411, equally applies to this  
case. The order of the moonsiff is reversed, and the suit remanded  
to him for re-trial, with the usual order for returning the insti-  
tution fee.

THE 22ND JANUARY 1851.

No. 417 of 1850.

*Regular Appeal from a decision of Moulvee Munneerooddeen Hossein,  
Moonsiff of Muhwa, dated 22nd July 1850.*

Ooma Dyal and two others, Appellants, (third parties,)

*versus*

Khadim Hossein and two others, (Plaintiffs,) and Fukeera Khan,  
(Defendant,) Respondents.

SUIT to recover Company's rupees 3-4-6, and something more,  
principal and interest of alleged arrears of rent of 1 beegah, 17 cot-  
tahs, 14 dhoors of land in cultivation, situate in tola Tundispore,  
attached to mouza Russoolpore Kumrawah, from 1253 to 1256  
F. S.

JUDGMENT.

The decision recorded in the suit No. 411, equally applies to this  
case. The order of the moonsiff is reversed, and the suit remanded  
for re-trial, with the usual order for returning the institution fee.

THE 29TH JANUARY 1851.

No. 363 of 1850.

*Regular Appeal from a decision of Baboo Bishun Lall, Moonsiff of  
Dulsing Serai, dated 6th July 1850.*

Seeta Pasban and three others, (Defendants,) Appellants,

*versus*

Hemnath Jha, (Plaintiff,) Respondent.

THIS was a suit to recover on bond, dated the 9th Bysack 1250 F. S., the sum of Company's rupees 85-10, principal and interest of a loan alleged to have been made by the plaintiff to the defendant, Seeta Pasban, on the security of two others, of the defendants Jhuckree and Soma, with separate deed for the latter.

Two of the defendants, Seeta and Soma, altogether denied having either borrowed the money or written the bond: an answer to the same effect being separately filed by Juggun and Jhoomuk, the heirs of Jhuckree, deceased.

The suit was decreed by the moonsiff in favor of the plaintiff, in the first instance against the borrower of the money, the defendant Seeta, and on failure of payment by him, against his co-defendants as his securities; the moonsiff finding the plaintiff's claim established by the testimony of two of the witnesses named in the bond, and he observed that, although the alleged writer of the bond denied having written it, the handwriting of it was found to correspond with that in other papers which that individual admitted to have been written by him.

By the defendants it was pleaded, in appeal, that the two witnesses on whose evidence the moonsiff based his judgment, were creatures of the plaintiffs, and who could not read or write; the alleged writer of the bond having denied that he wrote it, and accordingly neither the bond for the money nor the security bond had been proved and identified.

#### JUDGMENT.

The moonsiff's failure to record the proceeding required by Section 10, Regulation XXVI. of 1814, obliges me to return the case to him for re-trial and decision according to law. I accordingly reverse his order, and remand the suit to him for that purpose, with the issue of the usual order for the refund of stamp duty.

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PRESENT: W. ST. QUINTIN, ESQ., ADDITIONAL JUDGE.

THE 2ND JANUARY 1851.

No. 511 of 1848.

*Appeal against a decree passed by Moulree Neamut Ali Khan, late Principal Sudder Ameen of Tirhoot, on 10th August 1848.*

Karee Singh and Mahabul Singh, sons and heirs of Chemnarain Singh, deceased, (Plaintiffs,) Appellants,

*versus*

Kunhyah Singh, son and heir of Parusnath and Huruk Lall, first party, Sunt Lall Chowdhree, Kooshee Chund, Munnoo Lall, Kalee Pershaud and Dhoul Singh, second party, (Defendants,) Respondents.

THIS suit was instituted on the 9th April 1847, to recover the sum of rupees 1920, being the amount principal and interest due on a covenant, dated 9th Aughun 1240 F. S.

The plaintiff states that the defendants, Parusnath and Huruk Lall, claimed a share in the jagheer mehal of Kadar Abad and Morad, which had been resumed and was then under settlement; that they accepted 900 rupees from the father of the plaintiff, upon an agreement that, if they were admitted to a half share settlement of the jagheer, they would transfer a one anna share to the plaintiffs, on their paying up a further sum of 900 rupees; that the settlement was eventually made with another party, Parusnath and Huruk Lall being declared entitled only to malikana rights; that it was further agreed that, in the event of the settlement not being made with Parusnath and Huruk Lall, they should not dispose of their interests in the villages of Jumalpoore and Mahadeapore, without first repaying the 900 rupees to the plaintiffs; that the advance has not been refunded, hence the present action.

The first party of defendants, in reply, deny the validity of the covenant, and declare it to be an invention.

The second party of defendants, in their reply, plead that the claim is false; that subsequent to the date of the alleged ikrarnamah, Parusnath and, after him, his heir, Kunhyah Singh, and Huruk Lall, have sold their shares in Mahadeapore and Jumalpoore to them, and they are now in possession accordingly; that the suit is barred by the statute of limitations.

The principal sudder ameen dismisses the suit, considering that the statute of limitations bars the action as it was not preferred within twelve years of the date of the ikrarnamah.

In appeal, the plaintiffs urge that the action is not barred by the law of limitations, since the cause of action arose on the 29th March 1841, the date on which it was finally decided by the revenue

authorities; that Parusnath and Huruk Lall were not entitled to be admitted to the settlement.

The point to be disposed of in appeal is, whether or not the law of limitation bars this suit.

### JUDGMENT.

The 900 rupees advanced was not claimable before the 29th March 1841, the date on which it was finally ruled not to admit Parusnath and Huruk Lall to a settlement of this estate. The cause of this action could only have arisen on that date, and as this suit was instituted on the 9th April 1847, the plaintiffs are entitled to a decision on the merits of their claim. I therefore reverse the decree of the lower court, and return the case for decision on the merits, and pass the usual order for a refund of the stamp value to the appellants.

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THE 3RD JANUARY 1851.

No 534 of 1848.

*Appeal against a decree passed by Moulree Neamat Ali, late Principal Sudder Ameen of Tirhoot, on 24th January 1848.*

Mohunt Toolsee Das, (Defendant,) Appellant in the suit of Goshein Toolsee Dass, (Plaintiff,) Respondent,

*versus*

Appellant, and Beekhum Das and four others, disciples of Mohunt Luchmun Das, Defendants.

THIS suit was instituted on 30th December 1847, for possession, and to become registered proprietor of a 2 anna share of mouza Peeprah, by right of purchase.

The plaint is, that Mohunt Lutchmee Das sold his share to the plaintiffs in a registered deed of sale, dated 26th Poos 1251 F. S.; that the vendor was ousted of possession in an Act IV. case; that his right was established by a decree of court, dated 30th June 1847; that the seller is now dead, and his disciples, the defendants, will not render up possession to the plaintiff, hence the present suit. Mohunt Beekhum Das, defendant, pleads, in reply that he is the disciple and heir of Mohunt Luchmun Das; that the other defendants in the suit are not the disciples of the Mohunt, that when the Mohunt was in law-suit difficulties, two deeds of sale were drawn out, one for six annas of the estate of Jhotun Jah and others, and the other for two annas to the plaintiff; that the sales were never completed; that Jhotun Jah and others returned their deed, but the plaintiff has retained the deed of sale drawn out in his favor.

The principal sudder ameen considers that the evidence of the writer of the deed of sale, and of the witnesses to it, fully prove that the transaction was *bonâ fide*, the purchase money paid, and received,

and observes that a petition of the vendor, acknowledging the sale, is filed as proof in the case. The claim is therefore decreed.

The appellant urges, in appeal, that his right of succession to Mohunt Luchmun Das was established on the 7th July 1848; that Beekhum Das and others are not his heirs; that the lower court ought to have nonsuited the plaintiff, and passed an order for a fresh action against the appellant singly.

The points to be decided in appeal are the validity or otherwise of the deed of sale, and how far the pleas, on which his appeal is made, are connected with the real point at issue in the case.

#### JUDGMENT.

The purchase of the respondent from Mohunt Luchmun Das, of this two anna share is sufficiently proved. The respondent was obliged to include amongst the defendants all the parties claiming right of succession to Mohunt Luchmun Das. No hereditary rights are at issue, nor are any determined in the present suit. The decree is therefore upheld, and appeal dismissed, without issue of notice to respondent.

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THE 7TH JANUARY 1851.

Nos. 549 and 563 of 1849.

*Appeals against a decree passed by Moulvee Neamut Ali Khan, late Principal Sudder Ameen of Tirhoot, on 17th August 1848.*

Mohunt Naraingeer, (Defendant,) Appellant, Bheekoo Lall, (Defendant,) Appellant, in the suit of Mr. Mitchell, (Plaintiff,) Respondent,

*versus*

Appellant, heir of Mohunt Surwungeer, and Ram Surun Singh, heir of Mahabul Singh, Jydeal Singh, and Jyergash Singh, proprietors, and Moonshee Deendyal Singh, farmer, (Defendants.)

THIS suit was instituted on the 31st May 1847, to recover the sum of 624 rupees, 14 annas, being the amount principal and interest of balances of rents accruing between 1250 and 1253 F.S., according to an order for payment, dated 19th June 1842, granted by Mohunt Surwungeer and Mohabul Singh, on a seven anna out of an eight anna share in the village of Mahadeoputtee.

The plaint is that Mohunt Surwungeer leased his 8 anna share in this estate to the defendant, Moonshee Deendyal Singh, under a pottah, dated 23rd March 1840; that the lease began in 1247 and ended in 1253; that whilst the lease was current, Surwungeer sold 4 annas in the estate to the defendants, Mohabul Singh and others, and granted to them an order on the farmer, Deendyal, for payment of the rents for the four annas; that Mohabul Singh, Jydeal Singh, and Jyergash Singh were the purchasers of 3 annas, and Bheekah Khan and Girdwaree Khan purchased 1 anna in this 4 anna share;



that an order was granted on Deendyal Singh, the farmer, to pay rent accordingly to the purchasers; that, after this, Mohunt Surwungeer leased 4 annas, and Mohabul Singh and others, their 3 annas to the plaintiff from 1250 up to 1253 F. S., and gave him an order on Deendyal Singh, for payment of rent accordingly; that in 1250 F. S., the plaintiff paid 125 rupees of rent, and on demanding the rent from Deendyal, he declared that the rents had been paid to the proprietors.

Mohunt Naraingeer, in reply, pleads that the plaintiff never had a lease and was never in possession, nor did he ever pay any rents for 1250 Fusly; that the fact is that Mohunt Surwungeer, the gooroo of the defendant, was in the absence of the defendant drawn into these sales; that on the defendant's return from pilgrimage, he urged his objections before the collector; that defendant's possession and that of his farmer was confirmed to them under Act IV; that Bheekah Khan and Girdwaree Khan have withdrawn their claims as the purchasers of one anna; that no purchase money was paid.

The defendants, Ram Surun Singh, heir of Mohabul Singh, and the other joint purchasers of the 3 anna share, reply that they are not liable to the plaintiff; that the plaintiff has paid 125 rupees of rent to them and Mohunt Surwungeer.

Phekoo Lall, the heir of Deendyal Singh, defendant, in reply, pleads that he held eight annas of the estate in farm, and has paid rents accordingly to the proprietors, Mohunt Surwungeer; that the alleged order for payment pleaded by the plaintiff is a mistake.

The principal sudder ameen considers the deed of sale from Mohunt Surwungeer to Mohabul Singh, and the lease from them to the plaintiff, to be proved in evidence, and passes a decree in favor of the plaintiff, against all the defendants.

Against this decree, two appeals are instituted.

Mohunt Naraingeer, defendant, appeals on the pleas similar to those urged in his first reply to the claim.

Phekoo Lall, the heir of Deendyal, defendant, appeals on the pleas that he has paid his rents according to his pottah to Mohunt Surwungeer, and this is admitted by Mohunt Naraingeer, and the claim of the plaintiff against him ought consequently to have been dismissed; that besides this he has been made to pay the rents twice over, and been made responsible for mesne profits and usufruct accruing on the zerat lands.

#### JUDGMENT.

These cases are component parts of the two following appeal cases, Nos. 551 and 562. The same observations apply here, and the same decretal order is accordingly passed.

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THE 7TH JANUARY 1851.

No. 550 of 1848.

*Appeal against a decree passed by Moulvee Neamut Alli Khan, late Principal Sudder Ameen of Tirhoot, on 21st August 1848.*

Musst. Mukhun Kooer, daughter of Lalla Shewaram, deceased,  
(Plaintiff,) Appellant,

*versus*

Musst. Buddama Kooer, wife of Gunput Rai, deceased, and  
Musst. Genda Kooer, mother and guardian of Nughoonee  
Lall, minor son of Junglee Lall, deceased, (Defendants,) Res-  
pondents.

THIS suit was instituted on the 2nd June 1847, for possession and mesne profits, and a definition of jumma and lands in a third share in  $14\frac{1}{4}$  annas proprietary rights and 16 annas mokururee acquired, 1 gundah out of 3 gundahs, and one-third out of 2 cowrees purchased, one-third out of 1 cowree according to a decree for pre-emption in 1 anna, 9 pie, in the village of Ugrail Khoord, also in homes at Patna, and for a mutation of names by cancelling a hibbeh-nama, dated 27th Ramzan Mobaruk 1255 Higiree. Suit valued at 159, 14 annas 3 pie.

The plaint is that Lalla Shewaram, the father of the plaintiff, purchased a  $14\frac{1}{4}$  anna share in this estate, in the names of his sons, Gunput Rai and Bhyronath; that he occupied during his lifetime, and on his death the two sons succeeded; that the sons died and Musst. Suromun Kooer, the wife of Bhyronath, also died, leaving only Buddama Kooer, wife of Gunput Rai, survivor; that the plaintiff is one of three daughters of Shewaram and has issue; that as the sons died without issue, according to the shasters, the three daughters inherit equal shares in the estate; that the defendant, Junglee Lall, son of Musst. Muhtab Kooer, one of the sisters of plaintiff, on an alleged deed of gift executed in his favor by Gunput Rai and Musst. Suromun Kooer, instituted a suit for right of pre-emption in  $\frac{1}{2}$  gundah of a 1 anna, 9 pie share, in the estate, which ended in his obtaining a decree on a razeenamah for 1 cowree; that Musst. Suromun died whilst this suit was pending; that the son of the plaintiff petitioned as a third party in the suit; that Junglee Lall obtained a dakhil-kharij on this decree, and fraudulently got possession of the whole of the effects of Shewaram; that the son of the plaintiff petitioned for dakhil-kharij in a third share, prior to the decree for pre-emption; that, subsequently, Junglee Lall has purchased these other shares of the village, with the paternal coin, in the name of his son, Rugbunse Suhye, a minor, and in collusion with Buddama Kooer.

The defendant Buddama Kooer, the wife of Gunput Rai defendant, in reply, pleads that neither the plaintiff nor her sisters have

any hereditary title to the estate now claimed; that the estate was not acquired by Shewaram but by Gunput Rai; that Gunput Rai, in his lifetime, adopted Junglee Lall; that 7 annas, 2 gundahs, 2 cowree, out of the  $14\frac{1}{2}$  annas milkeut, and 8 annas, out of the 16 annas, mokururee, was made over to Junglee Lall, under a deed of hibe-bil-ewuz for 4125 rupees; that the deed is sealed by the cazee and duly registered; that Junglee Lall occupied the estate under this deed; that even if Junglee Lall was not the adopted son of Gunput Rai, the estate would come to Buddama Kooer; and in no way can the plaintiff's right be established.

Junglee Lall, defendant, urges the same pleas in his reply to the claim.

The principal sudder amcen dismisses the claim for several reasons. First, because the plaintiff produces only oral and no documentary evidence to support her claim; that the evidence of two witnesses is not taken because they are represented by the plaintiff to have gone over to the defendants' side; that out of the seven witnesses who have deposed, two confirm the objections of the defendants; that the plaintiff has summoned thirty-seven witnesses, but no amount of oral evidence will be sufficient to nullify the hibe-bil-ewuz. Secondly, this deed of hibe is clearly established by the evidence of the defendants' witnesses. Thirdly, that copies of proceeding by the revenue authorities show that Gunput Rai and Junglee Lall were the co-proprietors in this estate, and that the plaintiff never carried her objections before these authorities. Fourthly, three decrees of court prove the possession of Junglee Lall. Fifthly, that a copy of a petition presented to the collector shows that Ram Lochun Singh, the son of the third daughter of Shewaram, denied a right of inheritance to Shewaram, and also admitted the adoption of Junglee Lall, by Gunput Rai.

The plaintiff, in appeal, urges that her right of inheritance could only be proved by the genealogical tree of the family, and oral evidence; that the alleged adoption and hibe-bil-ewuz are inventions; that this point has not been enquired into; that the estate claimed is proved to have descended to Shewaram; that as the sons of Shewaram died without heirs, the sisters inherit according to Hindoo law, and that Junglee Lall has only a right to a third share.

The point to be decided, in appeal, is whether or no the appellant has any claim on the estate of Shewaram, her deceased father.

#### JUDGMENT.

The claim of the appellant hinges on two points which have been passed over without observation in the lower court. The first point for determination is whether or no this estate was acquired by Shewaram, and, secondly, whether, according to Hindoo law, the

daughter inherits on the demise of her brother, without issue. The respondents' possession is not denied. The appellant claims to be a co-sharer in the estate of her ancestor Shewaram. I therefore reverse this decree, and direct a re-trial, *de novo*, and pass the usual order for a refund of stamp value to the appellant.

THE 7TH JANUARY 1851.

Nos. 551 and 562 of 1848.

*Appeal against a decree passed by Moulvee Neamut Ali Khan, late Principal Sudder Ameen of Tirhoot, on 17th August 1848.*

Naraingeer, (Defendant,) Appellant, Phekoo Lal, heir of Deendyal Singh, (Defendant,) Appellant in the suit of Ramsurun Singh, heir of Muhabil Singh, deceased, and Jyedzal Singh and Jye Perkas Singh, (Plaintiffs,) Respondents,

*versus*

Appellant third party, Bheekoo Lall, heir of Moonshee Deendyal Singh, farmer, second party, Mr. Hardinge, third party, and Mr. J. D. Mitchell, fourth party, Defendants.

THIS suit was instituted on the 20th September 1847, for possession in 3 annas of the village of Mahadcoputtee, and to recover 531 rupees, 13 annas, the amount, principal and interest, of income accruing between 1250 and 1253 F. S., according to the terms of a lease given to Deendyal Singh, and 257 rupees mesne profits for 1254 F. S., and 551-6-8, the value of the produce of 17 beegahs, 2 biswas of khoodkasht lands, from 1251 up to 1254 F. S., and to set aside a decision under Act IV. dated 27th August 1847, and to cancel lease to Mr. Hardinge. Suit valued at rupees 1595-10-8 pic.

The plaint sets forth that Mohunt Surwungeer, the ancestor of the defendant Naraingeer, sold to the plaintiff 3 annas out of his eight anna share in this village, and one anna to Bheekah Khan and Girdharee Khan, under one and the same deed of sale, dated 6th Jyete 1248 F. S. The deed was duly registered, and a mutation of proprietary names had upon it; that after registry, Bheekah Khan and Girdharee cancelled their purchase of one anna; that as this eight anna share was let in farm to the defendant, Moonshee Deendyal, the seller granted the plaintiffs an order on him for payment, ratably, of the rents due on their 3 anna share; that the khoodkasht lands were not included in the farm, and possession was rendered to the plaintiffs in 17 beegahs, 12 biswas, 1 dhoor as their ratable share in the zerat lands of the village; that this possession continued up to 1250 F. S., and the rents duly realized up to 1249 F. S., that before the lease to Deendyal had expired, the 3 anna share of the plaintiffs, with a 4 anna share of Mohunt Surwungeer, were re-leased to Mr. Mitchell, from 1250 up to 1256 F. S., under a pottah, dated 19th June 1842; that an order

was given to Mr. Mitchell to receive the rents from Deendyal Singh; that in 1251 F. S., the defendant dispossessed the plaintiffs of their khoodkasht lands; that on the expiry of the lease to Deendyal at the end of 1253, the plaintiffs came into personal occupation; that Surwungeer then gave a lease of the 8 annas to Mr. Hardinge, and in a dispute for possession, under Act IV, the plaintiffs were ousted; hence the present action.

The defendant Naraingeer, in reply, pleads that the plaintiffs ought to be nonsuited as their claim is on several counts; that the alleged deed of sale is of no use as the purchase money was never paid; that Mohunt Surwungeer is out of his mind and his affairs conducted by the defendant; that the plaintiffs took advantage of defendants' absence to draw Surwungeer into this transaction; that the alleged purchasers of one anna have retracted; that the plaintiffs have never been put in possession; and that on the expiry of the lease to Deendyal Singh, the whole village was leased to the factory of Pahapoor, on the part of Mohunt Surwungeer.

Phekoo Lall, heir to the defendant Deendyal Singh, in reply, pleads that he held this farm and paid the rents to the proprietors, and the plaintiffs have no claim against him.

Mr. Holloway, in the place of Mr. Hardinge, defendant, pleads that the whole of the village was leased to him by Surwungeer and the other proprietors from 1254 to 1262.

Mr. Mitchell, defendant, replies in confirmation of the plaintiff's statement.

The principal sudder ameen considers that the sanity of the seller and the sale to the plaintiffs is proved, both by the oral and documentary evidence produced for the prosecution, and that the cancellation of the sale of one anna to Bheeka Khan, &c., does not in any way vitiate the claim of the plaintiffs. A decree is therefore passed against the three first parties of defendants. The 4th party being exempted from liability, 531-13-6 is decreed as intiffa from 1250 up to 1253 F. S., and 257-10 as mesne profits for 1254, and 551-6-1 as the value of produce of the zerat lands and the plaintiff's court expenses; and the plaintiffs are made liable for the court expenses of the defendant Mr. Mitchell.

Against this decree two appeals are preferred. First, by the defendant, Naraingeer, on the pleas set forth in his first reply to the claim. Secondly, by Phekoo Lall, the heir of Deendyal Singh, the first farmer, who pleads that he has paid his rents to Naraingeer, which is admitted by him; that the court holds him responsible for three times as much as he can, under any circumstances, be liable for; that he is made to pay the rents to Mr. Mitchell, (cases 549 and 563) to the plaintiff, and to Naraingeer; that he is also made responsible for mesne profits for 1254, and also for a share in the usufruct of the zerat lands.

The points to be decided in appeal is, whether this decree can be upheld against the appellants.

### JUDGMENT.

The principal sudder ameen passes a decree, ijmael, against the three first parties of the defendants: that is, he holds Deendyal Singh, appellant, the party who held the farm from 1247 up to 1253, responsible for a share in the mesne profits claimed for 1254 F. S., as well as for a share in the usufruct claimed in the zerat lands, which lands the plaintiffs admit were never in the occupation of Deendyal Singh. Deendyal Singh is also made to pay the rents twice over; once to the respondents in the present suit then to the respondent, Mr. Mitchell, in suits Nos. 549 and 563. This too in the face of an admission on the part of Naraingeer that he had received the rents from his farmer, Deendyal Singh.

The errors above pointed out must be corrected in the lower court. I therefore reverse this decree, and return the case for reconsideration, and pass the usual order for refund of stamp value to the appellants.

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THE 8TH JANUARY 1851.

No. 477 of 1848. .

*Appeal against a decree passed by Syud Mahomed Mohamid Khan, late second Principal Sudder Ameen of Tirhoot, on 15th July 1848.*

Lokermun Opadliya and three others, (Defendants,) Appellants,

*versus*

Byjnath Singh, heir of Sheoram Singh and seven others, (Plaintiffs,) Respondents.

THIS suit was instituted on the 25th January 1834, to establish a right in, and to obtain possession of 501 beegahs of Dearah lands, appertaining to mouza Bungrah. Suit valued at rupees 1503.

The plaint sets forth that the village of Bungrah, the property of the plaintiffs, is situated on the bank of the river Gunduck; that in 1220 Fusly the ancestors of the defendants pursued the ancestors of the plaintiffs for 30 beegahs of the alluvial lands of Bungrah, on the plea that they appertained to the defendants' village of Madhopoor; that whilst this suit was pending, the river Gunduck pointing from the north of the Byah Nuddee, came into the heart of Bungrah, and carried off the 30 beegahs in dispute, together with a large portion of the other lands of Bungrah; that Roushun Lall, ameen, was appointed to make a local inquiry, when the defendants pointed out 30 beegahs of alluvial land on the south of the Byah as the lands claimed by them, as belonging to Madhopoor, and the plaintiffs pointed out the boundary of Bungrah to the north of the Byah; that the suit for 30 beegahs was dismissed, and a recognizance taken from

the plaintiffs not to interfere with any lands situated to the north of the Byah; that in this way the plaintiffs were dispossessed of their lands to the north of the Byah; that, in 1224 Fusly, the Gunduck returned to its former bed, and all the old lands of Bungrah were restored to the plaintiffs, and they occupied them in peace up to 1229 Fusly; that when the autumnal harvest of that year was ripe, the defendants interfered and attempted to take possession of the lands of the plaintiffs; that this gave rise to a dispute before the criminal courts, which, after a long course of law, ended in the commissioner directing the collector on the 2nd April 1830 to attach the land in dispute, and the parties were referred to the civil courts to settle their dispute; that the boundary of the Dearah, so attached, is from the mouth of the Byah away to the north-west corner of the boundary of Esanchupra, and from that point due west to the Gunduck.

The defendants, in reply, plead that it is distinctly stated in the decision, under Regulation XLIX. of 1793, that the Gunduck had formerly flowed straight north and south, and that it then had diverged from this course, and that all land situated between Bungrah to the west and the eastern bank of the river, was the property of the proprietors of Bungrah, and that the lands situated opposite Madhopore belonged to the proprietors of Madhopore; that as the 30 beegahs, then disputed for, were carried away by the river; no decree could have been passed for them, therefore the dismissal of that suit is not evidence in the present one; that the river is constantly changing its bed, and that, by usage, alluvial accretions belong to the proprietors of the estates in which they form.

On the 27th February 1837, Syud Abdool Wahid Khan, the then principal sudder ameen, passed a decree dismissing the claim: his opinion being that, in claims for alluvial land, the point to be looked to is on what estate they form; that the plaintiffs have filed a map drawn by Roushun Lall, ameen, which shows that this Dearah has accreted to Madhopore, and not to Bungrah, and the map also shows the boundary of Bungrah to be a road running east and west from Esanchupra to the river: the plaintiffs cannot therefore claim lands situated to the north of this road; that Mr. Prinsep, the magistrate, marked out the correct boundary, and his orders were reversed by the Nizamut, simply because he had no power to define and fix a boundary. This decree was upheld in appeal before Mr. Oldfield, the judge, on the 1st September 1838, on the ground that after hearing the representation made by an ameen appointed by his court to conduct a local inquiry, and inspecting the map furnished by this officer, and considering these and the reasons of the principal sudder ameen to be in support of the boundary laid down by Mr. Prinsep. Mr. Oldfield also decided that as this boundary will dispossess the plaintiffs of certain lands, the defendants are not to have possession without a regular suit.

On the 4th May 1839, the Sudder reversed both these decrees, and remanded the case for re-investigation, being of opinion that the case ought not to be disposed of merely on the map drawn by Mr. Prinsep; that if the court is not satisfied with the evidences of the witnesses of these parties, it can call for further evidence or measure the two estates; and that it is altogether beyond the record to fix a boundary which will dispossess the plaintiff of lands actually in his possession.

On the 20th July 1843, Syud Ashruff Hossein, the late second principal sudder ameen, passed a decree in favor of the plaintiffs, after personally inspecting the lands in dispute, and sketching a map of the localities. This officer has recorded that the plaintiffs formerly stated the northern boundary of their village of Bungrah to be the road running east and west to the river from mouza Basdeopoor. They now state that the northern boundary extends up to the mouth of the Byah nuddee, and the northern corner of Gunnesh Dutt Missir's birt lands situated to the south of the Byah, and claim the whole of the Dearah to the south of this boundary; that the defendants formerly declared the southern boundary of Madhopore to be up to the sacred tree Jyram Barhum. They now state it to be up to the road running east and west to the river between the villages of Drosur Esanchupra, the property of Ahmud Ali Khan, and Bungrah; and they claim all the lands to the north of this road, that the lands attached by the collector are not correctly pointed out by either party, neither do they agree as to the locality of Gunnesh Dutt's birt lands; that as the river is annually changing its course, a measurement of these two estates will not assist in adjudging the case, and for the same reason the several maps must be discrepant; that he failed after making every endeavour to obtain disinterested oral evidence on the spot. He then gives four reasons for considering that the Dearah now claimed belongs to the plaintiffs.

*First*—That the dispute for 30 beegahs, was disposed of as far back as the 27th December 1816, when the claim of the defendant's ancestor was dismissed, and this decision has not been reversed; and as that land was attached under Regulation XV., and is still under attachment, it follows, therefore, that that land and the Dearah lands to the south belong to the plaintiff; that the evidence of the attaching ameen and copies of proceedings of the criminal court of the 2nd May 1822 and 17th September 1828, prove that the Dearah attached was from the mouth of the Byah Nuddee up to the north west corner of Deosur; that the maps of Roushun Lall, ameen, and Ahmud Khan, and his own, all show that the lands attached are situated to the south of the north west corner of Gunnesh Dutt's birt lands.

*Second*—That plaintiff's witnesses depose more clearly than those of the defendants.



*Third*—Meer Himnut Alli, an old authority of Deosur Esanchupra, deposes to a boundary at variance with the statements both of the plaintiffs and defendants; yet, in his opinion, his deposition goes for to vitiate the statement on this point made by the defendants, because he declared the boundary to be much further to the north of the road pointed out as the boundary by the defendants.

*Fourth*—The evidence of Munrajgeer, who has farmed the lands of Gunnesh Dutt Missir, although he resides in Bungrah, yet as he is a respectable person, his word may be depended upon, and his deposition supports the claim of the plaintiffs; and although the defendants declare that Gunnesh Dutt Missir, and Deenmun Missir, occupied separate and distinct birts, yet the evidence of Asali Ram, the agent of the defendants on the 17th April 1822, shows that they are one and the same, and occupants of the same birt lands. This decree was reversed on the 27th November 1846, in appeal before the then additional judge, whose reasons for remanding the case for a review of judgment, will be found at page 135 of the Zillah Court's printed decrees for November 1846.

On the 15th July 1848, the decree now appealed against, was passed by a third, second, principal sudder ameen, who takes the same view of the case as his predecessor, Syud Ashruff Hossein, and, coinciding with him in his reasoning in the case, passes a decree in favor of the plaintiff's claim.

Against this decree, the defendants appeal on their original pleas.

The point to be decided, in appeal, is to which of these parties this disputed Dearah belongs.

### JUDGMENT.

The pleaders of both parties in this suit admit the correctness of the map drawn on the spot by Syud Ashruff Hossein. This map is further explained by the other maps filed in the case, more especially by the map sketched by Ahmud Khan, the naib nazir of the judge's court, in 1838. These several maps show clearly that the Dearah, now claimed, has not accreted opposite to the estate of the respondents, (Bungrah) nor to Madhopore, the estate of the appellants. The usage of the country as regards the possession in alluvial lands does not, therefore, apply in this dispute. The parties to whom the Dearah would belong by usage, are not claimants for it. It therefore remains to be considered, which of these two contending parties make out the best claim to the Dearah. The intention of the decision in the suit, under Regulation XLIX. of 1793, dated as far back as the 27th December 1816, I hold to be that all alluvial lands forming to the southward of nuddee Byah (which at that time had united with the Gunduck, and subsequently took its own distinct course) should belong to the then defendants, the respondents in the present suit, and proprietors of Bungrah; and that all alluvial lands forming on the north of the Byah, should belong to the plaintiffs,

the appellants in the present suit, the proprietors of Madhopore, that is, that the stream of the Byah should be the boundary between the Dearahs of Bungrah and Madhopore. In that suit, the Madhopore proprietors were worsted in their claim to the lands situated to the south of the Byah, though an option was certainly left them to sue for the land then in dispute on the recession of the rivers. The waters subsided, according to the admission of the appellants, in 1224 Fusly, and these alluvial lands reformed, yet they did not sue for Dearah lands to the south of the Byah, till the 30th April 1842 or 1249 Fusly. This fact supports the claim of the respondents to all the Dearah formed to the south of the Byah.

The oral evidence produced by both parties is not much to be trusted, but, if admitted at all to weigh in deciding this dispute, it certainly preponderates in favor of the respondents, especially the depositions of Munrajgeer, Asah Ram and Himmuto Alli.

The documentary evidence, supported as it is on this point by the oral evidence, shows that the alluvial lands attached under the orders of the criminal authorities, are situated to the south of the Byah; that the boundary of the land so attached, runs from the mouth of the Byah along the south bank up to the north-west corner of the lands identified as the birt lands of Gunnessh Dutt and his son Decnmun Missir, along the western boundary of the birt up to the south-west corner, where it meets the north-west corner of Deosur Esanchupra, and in a line due west from that point up to the eastern bank of the Gunduck, and to this land, I consider claim of the respondents to be established. I therefore uphold this decree, and dismiss the appeal, without issuing notice on the respondents, whose appearance in this appeal has been voluntary.

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THE 8TH JANUARY 1851.

No. 478 of 1848.

Lokermun Opudhya and others, (Plaintiffs,) Appellants,

*versus*

Byjnath Singh and others, (Defendants,) Respondents.

THIS suit was instituted on the 25th April 1842, for possession of 505 beegahs of Dearah lands, appertaining to the village of Madhopore.

The particulars of this case will be found at page 138 of the Zillah decrees of Tirhoot, for November 1846.

This case is a cross suit to the preceding one, No. 477. Here the defendants of the former case sue for possession in alluvial lands, which they allege to have been attached by an ameen to the southward of the Dearahs decreed in the former suit.

The second principal sudder ameen dismissed this claim, on the grounds that these lands had been declared in the former suit to belong to the defendants.

## JUDGMENT.

The decree of the lower court is upheld in this case, since it has been ruled in the former suit, that all Dearah lands formed on the south of the Byah, belong to the proprietors of Bungra, the respondents. This appeal is therefore dismissed.

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THE 9TH JANUARY 1851.

No. 552 of 1848.

*Appeal against a decree passed by Moulree Neamnt Ali Khan, late Principal Sudder Ameen of Tirhoot, on 10th August 1848.*

Musst. Roopdeh, (Plaintiff,) Appellant,

*versus*

Jynath Jha, and Musst. Thakoorain, wife of Chotkee Jha, (sellers,) and Bridjlal Singh, (purchaser,) (Defendants,) Respondents.

THIS suit was instituted on the 5th October 1847, to establish a right of pre-emption for 2 annas in mouza Russoolpore. Suit valued at 60 rupees, 6 annas,  $\frac{1}{2}$  pie, three times the rent roll.

The plaint is that 8 annas in this estate was acquired by Dyanath Jha, the husband of the plaintiff, who died, leaving the plaintiff, his second wife, and his first wife and her two sons, Jynath Jha and Chotkee Jha, (defendants.) That by a decree of court the plaintiff and the above defendants obtained equal shares in the estate of Dyanath Jha; that these defendants made a bye mecadee sale of 2 annas, in their share to the defendants, Bridjlal Singh; that this sale was made absolute, and the purchaser sued for possession; that the plaintiff was a petitioner in the suit; that on this, 4th October 1847, Bunscedhur, a pleader, sent written notice to plaintiff that Bridjlal Singh had obtained a decree; that immediately on this the plaintiff made a claim of pre-emption according to law.

The defendants, the vendors, in their reply, plead that the sale is still disputed, and till this is settled, a claim for pre-emption cannot be sustained.

The defendant, the vendee, in his reply, plead that this claim for pre-emption ought to have been preferred within a reasonable time of the date of the deed of sale; that this action is brought three years and six months after that date; that this suit is instituted three months and fourteen days after the sale was made absolute; that the requirements of the law of pre-emption were never performed by the plaintiff.

The principal sudder ameen is of opinion that as this suit was not instituted for several months and days after the sale was made absolute, it cannot be sustained; that a precedent of the Sudder,

dated 25th January 1847, supports this view of the case; and the deed of sale has been declared valid in an appeal case just disposed of this suit must be dismissed.

In appeal, the plaintiff urges that the claim for pre-emption is valid, as it was made immediately the purchaser's right of possession was known to her.

The point to be decided in appeal, is at what period it was necessary for the appellant to claim this right of pre-emption.

### JUDGMENT.

The precedent quoted by the lower court is exactly in point, and will be found at page 23 of the Decisions of the Sudder Dewanny Adawlut for January 1847. It is there ruled that, in a case of this nature, a claim for pre-emption must be made immediately on the sale becoming absolute. This sale was made absolute on the 2nd June 1847, and the appellant did not assert her right till the 4th October following. The delay of four months and three days is fatal to the claim of the appellant. I therefore confirm this decree, and dismiss the appeal, without serving notice on the respondents.

THE 14TH JANUARY 1851.

No. 593 of 1848. •

*Appeal against a decree passed by Moulvee Mahomed Mahomid Khan, late second Principal Sudder Ameen, on 19th August 1848.*

Ramdhyan Singh and Hurdhyan Singh, themselves, and as guardians of two brothers, minors, (Plaintiffs,) Appellants,

*versus*

Seeta Ram and four others, (Defendants,) Respondents.

THIS suit was instituted on 28th September 1847, for possession in 10 beegahs 10 biswas out of 21 beegahs of fukeerana lands in the village of Mirzapore *alias* Bekanporra, and to recover the sum of 312-7-5-8, being the estimated value of mesne profits accruing from 1250 up to 1254 Fusly. Suit valued at rupees 1219, 10 annas, 7 pie, 16 krants.

The plaint sets forth that this village was the ancestral property of the plaintiffs; that their ancestor had granted 21 beegahs of land to Goshain Futteh Jutte; that in 1230 Fusly, the heirs of the Goshain sold the holding to the ancestor of the plaintiffs who occupied the lands up to 1249 Fusly, but in the month of Phalgun of that year, the grandfather of the plaintiffs sold to the defendants a four anna share out of their eight annas in the village; that the grandfather died; and the defendants during the minority of the plaintiffs, ousted them of half those fukeerana lands; that their lands are separate and distinct from the other lands of the estate; and that all the

Bishenpreet lands of the estate were exempted in the sale of the four anna share.

The defendants, in reply, plead that as the date of deed, under which this alleged grant was made, is not stated in the plaint, the suit is barred by Regulation IV. of 1793; that a nonsuit ought to be decreed, because the suit is not valued at the price of the 21 beegahs; that this alleged rent-free holding was never registered; that this eight annas share has been let in farm; and that no mention of these lands appeared in the farmer's jumabundee, nor are they mentioned in the papers of the professional survey.

The principal sudder ameen is of opinion that if the defendants had ousted the plaintiffs, the act would have been brought under the cognizance of the criminal authorities; that neither the date of the grant nor the name of the grantor are specified in the plaint; that the deed of sale produced by the plaintiffs is not registered; and that out of the four witnesses to the deed two are dead. Of the two surviving witnesses who depose in the case, one declares that the signature of the vendor was made by a person unknown to him, and the other deposes that the deed was drawn up by a mohurir of the cazee, which is contrary to custom, and signed by the vendor; that the signatures of Rymdyal Pandey, and of the vendor, to the deed, is in one and the same handwriting; and that if this holding had been *bonâ fide*, it would certainly have been recorded in the papers of the survey. A decree is therefore passed dismissing the claim.

In appeal, the plaintiffs plead that this grant was registered; and that the deed of sale was drawn out according to former custom.

The points to be decided in appeal, are the validity or otherwise of the appellants' purchase of these 21 beegahs of fukcerana lands, and the existence of the holding in question.

#### JUDGMENT.

I agree with the 2nd principal sudder ameen in opinion, that the appellants have failed to prove their purchase of these lands. In addition to the several reasons given by the lower court, the non-specification of this tenure in the deed of sale of four annas of the estate to the respondents, is another very strong circumstance against the appellants. The purchase not being proved, there is no occasion to inquire into the point of the existence of this holding separate from the other land of the estate. I therefore confirm this decree, and dismiss the appeal, without issuing notice to the respondents.

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THE 15TH JANUARY 1851.

No. 634 of 1848.

*Appeal against a decree passed by Moulvee Neamut Ali Khan, late Principal Sudder Ameen, on 6th September 1848.*

Jugmohun Rai and Bridjmohun Rai, sons of Supun Rai, deceased,  
(Defendants,) Appellants in the suit of Syed Aga Meer,  
(Plaintiff,) Respondent,

*versus*

' Bustee Ram, vendor, and the Appellant, vendees, (Defendants.)

THIS suit was instituted on 25th January 1843, for possession and mutation of registry, for 16 dams in a three anna, 4 dam share in the village of Eusifpoor, and to set aside a deed of sale, dated 5th January 1843. Suit valued at 1995 rupees, the amount of the purchase money.

The plaint sets forth that this is an undivided estate belonging, 15 annas 4 dam to the plaintiff, and the remaining 16 dams to the vendor defendant; that this defendant sold his share to Supun Rai defendant, for 800 rupees, and 1995 rupees was stated in the deed as the amount of the purchase money; that this was done without the knowledge of the plaintiff; that the plaintiff only gained information of the sale on a proclamation for dakhil-kharij being issued from the collector's office; that the plaintiff immediately claimed a right of pre-emption, and performed all the requirements of the law to establish his claim.

Supun Rai, the defendant, (the purchaser) in reply, pleads that the deed of sale was openly registered in this district on the 5th January 1843, and that this suit ought to have been instituted within a month of that date; whereas it was not instituted until six months and 20 days afterwards; that the transaction took place openly and in the presence of the agents and dependents of the plaintiff.

Bustee Ram defendant, the vendor, in his reply, pleads that he purchased this share, when sold at auction in satisfaction of a decree of court, jointly with Achumbit Mahto; that he subsequently purchased the interest of Achumbit Mahto without the plaintiff claiming a right of pre-emption; that he has been desirous of selling his share for the last fifteen years, and has repeatedly offered it for sale to the plaintiff, and did so on the present occasion; that on his refusal to purchase, the sale now in question was made, that the amount of purchase money actually paid and received was 1995 rupees; that this was the price acknowledged at the time of dakhil-kharij.

On the 24th January 1844, the then principal sudder ameen passed a decree in favor of plaintiff, considering that the claim for pre-emption had been legally made in all respects.

This decree was upheld in appeal before Mr. Cathcart, the judge, on the 30th December 1845. The present appellants after this

petitioned the court for a review of judgment, in the plea that it had come to their knowledge, since the decision of the suit, that the plaintiff was a minor of only eleven years of age. This petition was forwarded to the Sudder by the judge, with the recommendation that the prayer of the petitioner should be complied with. The Sudder directed that the case should be returned to the court of first instance, that a judgment might be passed on the plea then raised.

The decree now appealed against was passed on a review of judgment. The reasoning of the principal sudder ameen is obscure and contradictory; it however amounts to this, that the age of the plaintiff at the time he instituted this suit, is proved on evidence and from his personal appearance to have been fifteen years and four months, but that as the futwa of the mooftee called for in the case, shows that intellect and not age is to rule the period at which a person may declare a right of pre-emption, this suit has been legally preferred, and the plaintiff is entitled to a decree.

Against this decree the defendants, the purchasers, urge, in appeal, that this action is not cognizable as it was instituted by a minor.

The point to be decided in appeal, is whether this suit as instituted by the plaintiff in his minority is cognizable or not.

#### JUDGMENT.

The lower court admits that he, the plaintiff, was in his sixteenth year when he instituted this suit. The point at issue is not whether a minor can declare a right of pre-emption, but whether a minor can in any case institute a civil action *per se*, or independent of his rightful guardian. I therefore reverse the decree, and return the case for re-consideration on the above point, and pass the usual order for a refund of stamp value.

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THE 19TH JANUARY 1851.

No. 556 of 1848.

*Appeal against a decree passed by Syud Mahomed Mohamid Khan, late second Principal Sudder Ameen, on 21st August 1848.*

Chutterdharee Lall, (Plaintiff,) Appellant,

*versus*

Mungul Beharee Suhye, Musst. Khutranee Kooer, Musst. Soother Kooer, and Ramjewun Lall, (Defendants,) Respondents.

THIS suit was instituted on the 30th September 1847, to recover the sum of 1211 rupees, 5 annas, being the amount principal and interest due on a bond.

The plaint sets forth that a third share of the village of Selimpore was the property, in equal shares, of the four brothers Nowazee Suhye, Oud Beharee Suhye, Ram Beharee Suhye, and Nirth Beharee Suhye,

and was farmed to the plaintiff for 1233 Fusly; that on the demise of the first and third of these brothers, Joogul Beharee Suhye and Mungul Beharee Suhye, defendants, the sons of the first brother, and Musst. Soonah, the widow of the third brother, sold their property in the estate to the plaintiff; that a portion of the share of Nirth Beharee, the fourth brother, was also sold to the plaintiff, and the remainder of his share was held in farm by the plaintiff on an advance of 200 rupees; that after this Nirth Beharee died, and his widow, Musst. Sooteh Kooer, defendant, and Musst. Khutranee, defendant, widow of Oud Beharee Suhye, received the rents from the plaintiff, and granted him receipts up to 1252 Fusly; that 561 rupees were due to the plaintiff on behalf of Nirth Beharee, and these widows accepted a further loan of 400 rupees, and executed this bond; that the defendant, Mungul Beharee Suhye, on the plea of his being heir to the estates of Nirth Beharee and Oud Beharee, effected a dakhil-kharij through the instrumentality of the defendant, Ramjewun Lall, a collectory mohurrir; that for this assistance Ramjewun Lall was admitted as a 1 anna purchaser into the estate; that the plaintiff was ousted from his farm without his claims on the estate having been paid.

The widows, Musst. Khutranee Kooer and Soother Kooer, do not defend the suit.

The defendant, Mungul Beharee Suhye, pleads that as the bond was executed by the widows, he is not to be held responsible; that he occupies the estate as the heir of Nirth Beharee and Oud Beharee, and the widows have no hereditary title to it; that the widows have colluded with the plaintiff, and executed this bond to secure for themselves a right of succession to his detriment.

The defendant, Ramjewun Lall, in his reply, pleads that he is a purchaser of 1 anna in the estate, and is in no way liable for the claim of the plaintiff.

The principal sudder ameen observes that the bond is proved on the evidence of the witnesses to it, and the ladies who executed do not defend the suit, though due notice of action has been served on them; that the plaintiff alleges that he had a former claim on the husband of Musst. Soother Kooer, but because the widows executed this bond, it does not follow that the estates of their deceased husbands are in lien; that the heir, Mungul Beharee Suhye, was no party to the covenant, and neither he nor Ramjewun Lall can be held responsible. A decree is therefore passed against the ladies who executed the bond.

Against this decree, the plaintiff appeals on the plea that the estates of Nirth Beharee and Oud Beharee were in lien for this bond, and their estates were in the possession of these widows at the time the bond was executed, and a decree ought to be passed against all the defendants.



The point to be decided in appeal, is whether or no the claim of the plaintiff will reach the defendants who have defended this action.

#### JUDGMENT.

This looks like a false suit got up for the purpose of defrauding the respondent, Mungul Beharee Suhye, (the son of the elder of the four brothers) of his hereditary title to the estate of his deceased uncles, Oud Beharee and Nirth Beharee.

The bond does not specify that it was executed in satisfaction of the debt of Nirth Beharee: there is, therefore, no reason to hold his estate liable, and certainly none to make his heir responsible as he was no party to the bond in question. I therefore agree with the lower court in exempting the defendant, Ramjewun Lall, also from responsibility, and uphold the decree, and dismiss the appeal, without serving notices on the respondents.

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THE 22ND JANUARY 1851.

NO. 641 OF 1848.

*Appeal against a decree passed by Moulvee Neamut Ali Khan, late  
Principal Sudder Ameen, on 12th September 1848.*

Deodhur Singh, Jyram Singh, and Mohadeo Buksh Singh,  
(Defendants,) Appellants,  
*versus*

Baboo Purtaubnarain Singh and Bisheeshurnarain Singh, sons of Baboo Rugho Singh, deceased, and Baboo Puryagdutt Singh, for himself, and as guardian of Budgrunjee Suhye Singh and Bhyroo Suhye, sons of Shunkur Narain Singh, deceased, and Baboo Dwarkanath Singh and Baboo Juggoo Lall, minors, and sons of Beechuk Singh, deceased, (Plaintiffs,) Respondents.

THIS suit was instituted on 17th August 1847, for possession, mutation of registry, and definition of jumma and land of a two-anna share in mouza Jownapoor Rooder, and one anna and two and half pie in mouza Rajpooor, and two annas of Sindwaree, and two annas of Sheikh Sindwarce, and to set aside a farming lease, dated 10th May 1235, and to recover the sum of 759 rupees, 14 annas, 6 pie, principal and interest of rent balances, after deducting 1066 rupees, 10 annas, 8 pie, peshghec. Suit valued at rupees 2114-9-2.

The plaint is, that the sum of 424 rupees, 12 annas, 1½ pie, by a decree of court, and 560 rupees 4 annas on other accounts, were due to the plaintiffs, Ragho Singh and Beechuck Singh, from the defendants, Deodhur Singh and Jyram Singh; that when arrested in execution of the decree, they petitioned that they were not able to pay cash, and prayed to be allowed to make an out-and-out sale of this property to the plaintiffs in satisfaction of the debts; that this arrangement was sanctioned on 12th March 1836, and they were consequently released from arrest; that on the plaintiffs going to take

possession, their possession was opposed by the defendant, Mohadeo Buksh Singh, on the plea of his holding the property in farm, on a lease from 1236 up to 1240, for an advance of 1000 rupees; that the plaintiffs failed to obtain possession through the criminal courts; that Beechuck Singh sued several of the cultivators for rents, and his claim was rejected on the objection of the farmer, and Beechuck Singh was referred to a civil action to oust the farmer; that in consequence of difficulties, a suit was never instituted to try issue on this point; that the plaintiffs have paid up the Government revenue since the date of purchase, and have not received the rents from the farmer.

The defendants, the vendors, plead that the plaintiffs ought to be nonsuited for including a variety of claims in a single action; that the alleged deed of sale is an invention, and is dated nearly twelve years ago; that the defendants never petitioned the court to allow this sale; that no order was ever passed to sanction this alleged arrangement; that the Government revenue has been paid by Mohadeo Buksh, the tenant of the defendants; that the deed of sale has never been filed on any former occasion.

Mohadeo Buksh Singh, defendant, in reply, supports the above pleas, and urges that, as farmer of the estate, he is not actionable until the point of sale is settled between the sellers and purchasers; that if the sale was *bonâ fide*, why is it that an agreement to pay the rents was not taken from him by the plaintiff; that under a pottah, dated 10th Maugh 1235, he holds a farm of this property from the vendors, on the understanding that the lease is to continue till the advance of 1000 rupees is made good; that subsequent to the lease, 706 rupees was lent on a bond to the vendors, which was also to be paid up with the moneys advanced; that as neither of these sums have been realized, his right of tenantry is still good; that he has paid rent and Government revenue according to the terms of the lease.

Shewsulhye Singh, a third party, petitions that he is a shareholder in the estate; that had this sale taken place with his knowledge, he would have preferred a claim of right of pre-emption; that if the sale is declared valid he will prefer his claim.

The principal sudder ameen considers that the documentary proof adduced by the plaintiffs, proves that the vendors were arrested in execution of a decree had against them, and were released from arrest on executing this deed of sale; that the farmer petitioned at that time to give notice of his lien on the property, and if he has paid rents to the vendors, in the face of this, he must look to them for indemnity. A decree is, therefore, passed in full of the plaintiffs' claim.

The defendants appeal against this decree. The vendors on their former pleas, add that the witnesses to the deed of sale are relatives of the plaintiff, and gave discrepant evidence, and are declared to know nothing of the sale, and as claimant for a right of pre-emption; that the original petition on which it is alleged that they were

released from arrest, is not forthcoming, and the farmer, in appeal, pleads that the original petition in which he declared his lien on the estate is not forthcoming, and that as he has paid rents to the vendors to exempt his advance in this claim for rents, and to hold him responsible to the plaintiffs for rents is unjust; that in the case of Uchumbit Lall Mahata, an auction purchaser, *versus* Kunyalal and others, the principal sudder ameen decreed mesne profits against both the proprietor and his farmer, and in appeal to the Sudder, the proprietor alone was held responsible for rents; that no allowance is made for his claim on the bond.

The points to be decided in appeal, are the validity or otherwise of the deed of sale, and whether the farmer is liable for mesne profits.

#### JUDGMENT.

The respondent has filed copies of a petition and razeenamch, both dated 18th March 1836, and of a petition dated 24th March 1836. These copies were obtained from the court in 1837 and 1838. The two first documents prove that the deed of sale was executed to release the appellants (vendors) from arrest in satisfaction of a decree had against them by the respondents, and there is nothing on record to show that that decree was satisfied in any other way, and the last document shows clear enough that the appellant, the farmer, was fully cognizant of the arrangement. Consequently, I see no reason to disturb the award, and therefore dismiss the appeal, and confirm the decree, without issuing notices on respondents.

#### THE 23RD JANUARY 1851.

*Appeals against a decree passed by Moulvee Neamat Ali Khan, late Principal Sudder Ameen of Tirhoot, on 22nd September 1848.*

No. 642 of 1848.

Musst. Rewut Deyce, (Defendant,) Appellant.

No. 643 of 1848.

Musst. Soorja Koonwur, (Defendant,) Appellant.

No. 644 of 1848.

Rajcoomar Singh, (Defendant,) Appellant.

No. 645 of 1848.

Rughooburdial Singh, (Defendant,) Appellant, in the suit of Baboo Juggernath Dutt, (Plaintiff,) Respondent,

*versus*

The several Appellants, and Dookhun Singh, Musst. Jankie Koonwur, mother and guardian of Bhekdharee Singh, minor son of Bridge Bhookun Singh, deceased, and Surubjeet Singh, Chote Singh, Bhitchook Singh, Oomrao Singh, Doorgbejey Singh, Bunseraj Singh, Ramdial Singh, Musst. Jysree Koonwur, Duroputte Koonwur, Permeshree Koonwur, and Mussts. Bukshun, Newazun, and Fuzeelun, daughters of Behadoor Ali Khan, deceased, and Bhyro Dutt, Defendants.

THIS suit was instituted on the 3rd May 1847, to recover the sum of rupees 2410-13-3 pie, being the amount principal and interest of

excess of Government revenue paid in for mouzas Peeprah, Doodraj and Suedpoor, from 1240 up to 1251 Fusly.

The plaint sets forth that prior to 1240 F. S., the plaintiff was proprietor of 2 annas, 13 gundahs, 1 cowrie in this estate; that in the month of Phalgun 1243, the plaintiff obtained possession of 6 annas, 13 gundahs,  $1\frac{1}{2}$  cowrie, by decree of court had against Dookhun Singh and others, making the plaintiff's share in the estate 9 annas, 6 gundahs, 3 cowries; that from 1240 up to 1245, Jysree Koonwur and others, held 2 annas, 13 gundahs,  $1\frac{1}{2}$  cowrie, and from that year up to 1251, this share was in possession of Soorja Koonwur, and others; that 4 annas was held from 1240 up to 1251, by Musst. Rewutdeyee, and Rajcoomar Singh, son of Hunman Singh; that the whole of the Government revenue for the estate has been paid by the plaintiff, and this action is brought to recover from the co-sharers the several portion for which each is liable; that a suit instituted in 1844 for this claim was struck off on the 9th September 1845.

Musst. Soorja Koonwur, defendant, in reply, pleads that the plaint ought to have specified the amount due from each sharer; that since the death of her husband Oodah Singh she held no possession till 1248 F. S.; that from 1248 up to 1251, the revenue on her share has been regularly paid by her own agent, with the exception of 42-6-6, which has been paid by the plaintiff and is due to him on her behalf; that Bhyro Dutt who has been included by the plaintiff as a co-sharer with her, has really no interest in her 2 annas, 13 gundahs,  $1\frac{1}{2}$  cowrie share.

Musst. Duroputte Koonwur and Permeshree Koonwur, defendants, in reply, plead that they are the daughters of Soorja Koonwur; that by decree of court, it is ruled that they have no interest in the estate during the life-time of their mother; that consequently the plaintiff can have no claim against them.

Raj Coomar Singh, defendant, in reply, pleads that in the former suit, which was struck off, the plaintiff claimed the excess of revenue paid for twelve years, and in the present suit the interest of three additional years is claimed; and that, consequently, this claim ought to be dismissed; that out of the four annas share of Musst. Rewutdeyee, 1 anna,  $6\frac{1}{2}$  gundahs was purchased by his father, and according to this share he has paid the revenue.

Musst. Rewutdeyee, defendant, pleads that her present share in the estate is 2 annas, 13 gundahs, 1 cowrie; that this share was held in farm from 1237 up to 1243 by Hunman Dutt with a proviso that he should pay the Government revenue; that she is not therefore responsible; that since the expiry of the lease, her agent has paid up the revenue.

Dookhun Singh and Bhekdharee Singh, defendants, reply that 6 annas, 13 gundahs,  $1\frac{1}{2}$  cowrie was in their possession from 1241 up to the first half of 1243; that a balance of 165 rupees, 11 annas, 6 pies, for that period, is due to the plaintiff; that half of this amount

is due from Rughooberdial Singh, and in the other half they are liable for the 41-6-10½, and Surmjeet Singh and others are liable for the remainder.

Surmjeet Singh and six others, reply as above.

The plaintiff petitioned to exempt the defendants Musst. Duroputtee Koonwur and Permeshree Koonwur.

On the 16th September 1848, Rughooberdial, defendant, petitioned for two weeks' delay to enable him to file a reply, which was refused.

Rughooberdial, Musst. Jysree Koonwur, and Musst. Bebee Bukshun, and the other two daughters of Bahadoor Ali, do not defend the suit.

The principal sudder ameen observes that on making out the account between these parties, and comparing the receipts for revenue filed by both parties and the banker's books, and the evidence of the banker's gomashita, it appears that the plaintiff has allowed for the several payments made by the defendants, and that this claim is for revenue for which they are liable in excess of the sums actually paid by them; that it is on record that Musst. Soorja Koonwur received mesne profits from 1240 up to 1245, from Musst. Jysree Koonwur, after exempting the Government revenue, and, also, that Musst. Soorja Koonwur obtained a decree for rents for 1247, and that the law of limitations does not bar the present suit, since the excess of Government revenue has been paid year by year, and an intermediate action to recover it has been instituted by the plaintiff. A decree is passed in favor of the plaintiffs for rupees 2312-3-7. Musst. Duroputtee Koonwur and her sister are exempted from liability, and the plaintiff saddled with their expenses. Musst. Rewutdeyee and Raj Coomar Singh are made liable for 1212-7-2, being the amount due, principal and interest, on their four annas share, for the whole period. Jysree Koonwur and Bhyro Dutt are made liable for rupees 354-12-6, being the amount due on their 2 annas, 13 gundahs, 1½ cowrie share from 1240 up to 1245. Soorja Koonwur and Bhyro Dutt are liable for 452 rupees, 6 annas, 5 pies accruing on the same share from 1246 up to 1251 F. S., and Dookhun Singh and others are made liable for rupees 292-9-1 pie for their 6 annas, 13 gundahs, 1½ cowrie share from 1240 up to Phalagoon 1243.

Against this decree four appeals are instituted. Musst. Rewutdeyee appeals on the pleas urged by her in the first instance.

Musst. Soorja Koonwur appeals on the pleas urged by her in the first instance.

Raj Coomar Singh appeals on the pleas urged by him in the first instance.

Rughooberdial Singh, in appeal, urges that the lower court did not give him time to defend the suit.

The points to be decided in appeal, are whether or not the respondent paid in excess of his own revenue rent due from his co-sharers, and if so, how far each defendant is responsible.

## JUDGMENT.

I agree in the several reasons given by the principal sudder ameen for the decree passed. As the extent of the share of each appellant is detailed in the plaint, there was no occasion for the respondent to specify the amount of his claim against each sharer. The principal sudder ameen takes the total of Government revenue due from the estate, and compares the receipts filed by both parties in the suit, and discovers a balance due from each of the appellants to the respondent, who has paid a portion of the revenue due on each share in excess of the rent due on his own share. This is fair and equitable, and no exception is taken by the appellants to the account thus made out. The plea set up by the appellant, Musst. Rewutdeyee, that her farmer is answerable for the Government revenue, is not tenable, since the proprietor alone is accountable to the respondent; and as it is proved that this lady and the appellant, Raj Coomar Singh, the joint proprietors of four annas of the estate, have only paid a moiety of the Government revenue due for their share, they are of course answerable to respondent for the sum of rupees 1212-7-2, which he has paid up on their behalf. As regards the pleas of the appellant, Musst. Soorja Koonwur, it is on record that she obtained a decree for mesne profits in her share in the estate accruing from 1240 up to 1245 F. S., and, also, that she obtained a decree for rents due from her cultivators for 1247 F. S.; so that the plea that her possession commenced only in 1248 falls to the ground. The last appellant, Rughoober Dyal Singh, allowed the whole period, (about eighteen months) whilst the suit was pending, to expire without putting in his defence, and gives no sufficient reason for this default, either in the court of first instance, or in appeal before this court. An *ex-parte* decree against him is therefore inevitable. For these reasons I uphold this decree in every particular, and dismiss the appeals in each case, without requiring the attendance of the respondent.

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THE 24TH JANUARY 1851.

No. 646.

*Appeal against a decree passed by Moulvee Neamut Ali Khan, late Principal Sudder Ameen, on 20th September 1848.*

Moulvee Tobaruk Ali, and five others, (Plaintiffs,) Appellants,

*versus*

Chowdhree Sheikh, Wolayet Hossein, and five others, (Defendants,) Respondents.

THIS suit was instituted on 27th August 1846, to decide a title, and for possession and mutation of registry for mouza Bulundpore Dhoondooa, a dakhilee of mouza Bukree Buryee, and to cancel an

order of the superintendent of khas mehals, dated 29th August 1843, and a proceeding of the commissioner of revenue confirming this order, dated 3rd September 1844, and to recover the sum of rupees 682, 9 annas, 9 pie, the value principal and interest of mesne profits accruing from 1251 up to 1253 F. S. Suit valued at rupees 1300-9-9.

The plaint is that these two villages, uslee and dakhilee, composed one estate, and were years ago the milkeat and mokururee of Meer Jafer, and descended from him to his son and grandson; that in 1211 F. S., Rugnat Singh purchased the estate, and his heirs, Goolzar Suhye and others, (defendants) sold a 12 anna share to the plaintiff; that when the mokururee holding in this estate was resumed and came to be settled, the defendant, Wolayet Hossein, set up a claim to be admitted to the settlement, on the plea that the mokurureedars had no milkeat right in this dakhilee village, and that he was the proprietor as the heir of Noor Ali; that these objections were rejected, and a settlement made with the plaintiffs, on the 8th May 1848; that the settlement was reversed in appeal, and the village now claimed was settled with Wolayet Hossein; that Noor Ali formerly petitioned against Rugnat Singh to set aside the mokururee, and to procure a settlement of the village with himself; that the judge called on the collector who reported that, as both the mokururee and milkeat rights in the estate vested on Rugnat Singh, no settlement could be made with Noor Ali; that Noor Ali was then referred to a regular suit, and he has allowed thirty-six years to expire without bringing his action; that it is unjust to admit the defendant to a settlement, as he has no right or title to the village in question.

In reply, the defendant, Sheikh Wolayet Hossein, pleads that the village now claimed is not a dakhilee of mouza Bakree Burye, but is itself a substantive estate in which he holds the milkeat rights; that neither the plaintiffs nor the party from whom they have purchased, have any proprietary rights in the estate; that although Meer Jafer formerly held a mokururee of the estate, yet the proprietary rights have belonged to him and his forefathers; that the mokururee has now been resumed and a settlement of the estate made with him.

The defendant, Goolzar Suhye, one of the heirs of Rugnat Singh, in reply, pleads that Wolayet Hossein is the real proprietor of the estate, and that only a mokururee title was sold to the plaintiff.

The defendants Radha Bullum and Gapal Lal, also heirs of Rugnat, plead, in reply, that this is a dakhilee village, and that they sold both milkeat and mokururee rights to the plaintiff. The defendants, Nund Kishore and Joogool Kishore, also heirs of Rugnat Singh, do not defend the suit.

The principal sudder ameen dismisses the claim, as he considers that it is proved by the documentary evidence filed by the defendants, that this village is a substantive estate, and that the plaintiffs only pur-

chased the mokururee title, and that there is nothing to show that the vendors ever held any proprietary right in Bulundpore Dhoondooa : that the fact of Noor Ali having neglected to prefer a regular suit, in former years, does not bar his rights in any way to the estate. The plaintiffs, in appeal, urge their former pleas. The points to be decided in appeal, are whether or no this village of Bulundpore Dhoondooa is a substantive estate distinct from the village of Bukree Burye, and whether the vendors, the heirs of Rugnat Singh, had the power of selling but a mokururee and milkeat interest in Bulundpore Dhoondooa.

### JUDGMENT.

I agree with the principal sudder ameen in opinion, that the documentary evidence filed by the respondent Wolayet Hossein, is conclusive against the claim of the appellants. Rugnat Singh, the purchaser from the descendant of Meer Jafer, has admitted that he purchased the milkeat and mokururee rights in Bukree Burye with the mokururee rights in Bulundpore Dhoondooa, and the settlement papers show that Wolayet Hossein's forefathers are in occupation of 45 beegahs of malikana lands in Bulundpore Dhoondooa. The existence of malikana lands proves the village of Bulundpore Dhoondooa to be a substantive estate, and these lands being in the occupation of Wolayet Hossein, it was with him alone that the settlement of the estate could be made after the resumption of the mokururee. I therefore uphold this decree, and dismiss the appeal, without requiring the attendance of the respondent.

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THE 25TH JANUARY 1851.

No. 648 of 1848.

*Appeal against a decree passed by Moulree Neamut Ali Khan, late Principal Sudder Ameen of Tirhoot, on 21st September 1848.*

Musst. Khyratun, (Defendant,) Appellant,

*versus*

Musst. Asmut and others, (Plaintiffs,) Respondents.

THIS suit was instituted on the 15th April 1846, to recover the sum of rupees 1268-15-5-12 kts., being the amount principal and interest of court expenses awarded in a decree, dated 20th July 1822.

The plaint is that the ancestor of the defendant instituted a suit in *formâ pauperis* against the plaintiff, that the suit was dismissed, and the defendants held responsible for the court expenses of the plaintiff; that as the defendant was a pauper, and the court in which the suit was decided abolished, an execution for the law expenses was not taken out; that, subsequently, the ancestor of the defendant made a conditional purchase of 8 annas in the village of Coolsoom; that this purchase was made absolute, and possession ruled to the defendant, on the 10th May 1837.



The defendant, in reply, pleads that 24 years have elapsed since the date of the decree and the institution of the present suit; that no sufficient reason for this delay is pleaded; that these court expenses have been paid.

On the 16th December 1846, the then principal sudder ameen nonsuited the plaintiff for a trifling irregularity in the plaint, and this decree was overruled in a summary appeal to the judge, and the case returned to be disposed of on its merits.

The principal sudder ameen then passed an *ex-parte* decree against the defendant, because these expenses are ruled to the plaintiff by the decree of court, and the defendant does not defend the suit.

In appeal, the defendant urges that she had no knowledge of the second trial; that her reply in the first trial was a sufficient defence; that this suit is barred by the statute of limitations.

The point to be disposed of in appeal, is whether or no this case has had a fair hearing to sustain an *ex-parte* decree.

#### JUDGMENT.

As the appellant did file a reply before this suit came to a hearing, in the first instance, the ends of justice made it incumbent on the principal sudder ameen to pass an opinion on the pleas put forth in that defence. The preliminary inquiry in this case, is whether sufficient reason is given by the respondent for their delay in bringing this action, so as to make the law of limitations inapplicable, and the principal sudder ameen is directed to re-try the case, and pass an opinion on this point: and it is ordered that the decree be reversed, and the case returned for re-trial and a refund of stamp value to appellant.

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THE 27<sup>TH</sup> JANUARY 1851.

No. 647 OF 1848.

*Appeal against a decree passed by Moulnee Neamut Ali Khan, late Principal Sudder Ameen, on 20th September 1848.*

Mr. H. Holloway, (Defendant,) Appellant,

*versus*

Baboo Bishun Prokash Narain Singh, (Plaintiff,) Respondent.

THIS suit was instituted on the 16th September 1847, to recover the sum of 1586 rupees, 6 annas, the value of a proprietary share in the produce for 150 beegahs of land for 1254 F. S., in the village of Purecharpoor.

The plaint is that this village is in three shares, and is the property of the plaintiffs; that the defendant held the village in farm up to 1253 Fusly; that on the expiry of the lease, the plaintiff took his share into his own hands; that the defendant, without the consent of the plain-

tiff, continued to cultivate 443 beegahs, 7 biswas in sugar cane, and 4 beegahs in rice, and 2 beegahs, 13 biswas in other grain, and appropriated the whole of the produce; that the plaintiff valued the crops on the ground, and the amount now claimed is the estimated value of his third share in the produce.

The defendant, in reply, pleads that this is an undivided estate, and has been held in farm by this factory for the past twenty years; that the plaintiff refused to renew the lease; that he cultivated zerat lands; that the plaintiff's third share is 138 beegahs, 15 biswas, for which he is ready to pay at the rate of 2 rupees, 4 annas per beegah, the established rate of the land in question.

The principal sudder ameen decrees the whole claim to the plaintiff, since the evidence of the village accountant, and other witnesses of the plaintiff prove that the crops were valued in the presence of the defendant's agents and defendants.

The defendant, in appeal, urges that he cannot be held liable for more than the established rents of the lands, and that to value sugar-cane on the ground is an impossibility.

The point to be determined in appeal, is whether the plaintiff is entitled to recover according to the assessment of these lands or the valuation of the produce.

#### JUDGMENT.

There is no material difference between those parties as to the extent of these cultivated lands, and they are agreed as to the nature of the crops cultivated. The appellant cultivated without the consent of the respondent, and is therefore liable to make good a third share of the produce of the land. The established rent of these lands cannot be allowed to rule the amount for which the appellant is liable. The respondent is entitled to a third portion of the *actual produce*, and this could only be ascertained from a valuation of the crops on the ground. Considering that it is allowed that 443 beegahs 7 biswas was cultivated in sugar-cane, the most valuable crop then grew in this district, I do not think the amount claimed is at all exorbitant, and therefore uphold the decree, and dismiss the appeal, without causing the attendance of the respondent.

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THE 29TH JANUARY 1851.

No. 15 of 1849.

*Appeal against a decree passed by Pundit Dataram, Moonsiff of Jeeграh, on 19th December 1848.*

Jhootee Singh, and six others, (Plaintiffs,) Appellants,

*versus*

Gobindeal Singh, and six others, (Defendants,) Respondents.

THIS suit was instituted on the 11th August 1848, to confirm possession in 1 anna, 4 gundahs, out of 2 annas, 8 gundahs, in a

12 anna share in the village of Neepoor Painsahi, and to reverse a deed of sale, dated 13th June 1848. Suit valued at 54 rupees, being three times the rent roll of the property claimed.

The plaint is that 2 annas, 8 gundahs, in 12 annas of this estate, descended to the plaintiffs, and the defendants Poney Singh, Pharee Singh, and Musst. Neeroo, from their common ancestor, Pheroo Singh; that these defendants are only entitled to 8 gundahs in the ancestral estate; that they have sold 1 anna and 12 gundahs to the defendants, Gobindeal Singh and others, and this action is brought to set aside the sale.

The defendants, the purchasers, in reply, plead that the plaintiffs have no proprietary rights in the village, and that the vendors had a clear right to sell the share now in question; and that the purchasers are now pursuing the vendors for possession under the deed of sale.

The moonsiff having nonsuited the purchasers in their claim for possession, is of opinion that the present suit is not cognizable by his court, since the property claimed in both suits is one and the same. He therefore dismisses this claim.

In appeal, the plaintiffs urge that as their claim is to establish possession, and to set aside the deed of sale, the case ought to be decided on its merits, that as the nonsuited case has been returned in appeal for re-investigation, the two cases ought to be taken up and decided together.

The point to be disposed of in appeal, is whether or no this suit is to be decided on its merits.

#### JUDGMENT.

The purchaser, respondent in this case, was nonsuited in the case alluded to by the moonsiff, for an irregularity in the stamp valuation, and what that has to do with the present suit, I am so entirely at a loss to discover, that I am compelled to reverse this decree, and to direct a decision on its merits, and a refund of stamp value to the appellant.

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# ZILLAH TWENTY-FOUR PERGUNNAHS.

PRESENT: H. T. RAIKES, ESQ., JUDGE.

THE 3RD JANUARY 1851.

Case No. 2 of 1850.

*Appeal from a decision of Mr. Thompson, Sudder Ameen, passed on the 21st August 1850.*

Petumber Chukurbuttee, (Plaintiff,) Appellant,

*versus*

Denoobundoo Bhuttacharge and others, (Respondents,) Defendants.

THE plaintiff sued for possession of  $2\frac{1}{2}$  beegahs of land, valued at 625 rupees, and 10 jhars or clumps of bamboos, estimated at 10 rupees, and the price of 200 bamboos at 20 rupees. His claim was founded on a pottah from the alleged proprietor of the land, taken for 11 annas of a tank in 1254 B. S., of which the disputed land was stated to form part of the southern bank.

The defendants disputed the right of the plaintiff's alleged proprietor to give this portion of the land in pottah, averring that it was comprised within the boundaries of their lakhiraj land defined by a straight line drawn between two "asud" trees planted by their ancestors.

Plaintiff's alleged proprietor of the land, filed a reply in support of plaintiff's claim.

The sudder ameen observes, in his decision, that plaintiff's witnesses did not satisfactorily establish his having ever held possession, as their testimony was in many points contradictory, and that the party called proprietor by plaintiff, could give no proof of his ownership, but the kubooleut delivered to him by plaintiff and the deed of sale of his own land; that it appeared from other documents, that a dispute for these bamboos and the side of the tank on which they grew, had been brought before the criminal court as far back as 1224 B. S., when the father of the present alleged proprietor had claimed these bamboos, and they were declared to have been in the possession of the present defendants, and a moo-chulka taken from the former party to prevent his further interference with their property; and that the present suit is in reality another attempt on the part of his heirs to get possession of the land. The sudder ameen therefore dismissed the claim.

The plaintiff has appealed, urging the grounds set forth in the lower court.

I coincide with the sudder ameen in considering the plaintiff's claim unfounded. The real matter in dispute, is the old boundary line between the alleged proprietor of the tank and the defendant's lakhiraj land which joins it. The former has clearly not had possession since the case given against him in 1224 B. S., and though he denies that the land and bamboos then in dispute, are identical with those now claimed by his ryot, the plaintiff, yet he cannot explain or point out in what respects these claims differ. I consider plaintiff has failed to show that either his alleged landlord or himself ever possessed the land in dispute, and therefore see no reason to interfere with the sudder ameen's decision. This appeal is therefore dismissed.

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THE 8TH JANUARY 1851.

Case No. 52 of 1850.

*Appeal from a decision of Roy Huru Chunder Ghose Bahadoor, Principal Sudder Ameen, passed on the 10th July 1849.*

Ram Chund Dutt and Kally Churn Dutt, (Defendants,) Appellants,  
*versus*

Ram Chund Bhose, (Plaintiff,) Respondent.

THE particulars of this case are given at pages 74, 75 and 76 of the printed Decisions of this court for the month of July 1846, and again at pages 54 and 55 of this Zillah's Decision for April 1850.

It is only necessary to state that the plaintiff sued for possession of some rent-free land from which he alleged the defendants had dispossessed him. He first procured a decree for possession, but on special appeal, that decision was reversed, on the ground that the defendants had urged that plaintiff's rights by inheritance, under which he stated himself to have come into possession, only extended to a half share, which point had not been taken up by either the court of first instance or that of appeal, though urged in both, and a Warner of claim had been filed by the other heirs in support of plaintiff's claim.

On remand, plaintiff was nonsuited; but this was again set aside, and after another course through the courts, up to the Sudder, the case was again remanded with instructions to try the claim of plaintiff on the averment made by him, that when in sole possession of the property, he was dispossessed by the defendants, and that the other party described by defendants as plaintiff's joint heirs and possessors, had warned, by a reply to that effect, any claim hostile to the plaintiffs.

As it appears on a reference to the record, that defendants had filed no proofs in the lower court, and urged that they were only called upon to file their proofs, without being directed on the points

selected for trial, I must return this case for reconsideration. The appellants were only brought before the court as defendants, after they had proved that the notice of institution of the suit had never been served upon them, and the principal sudder ameen after receiving their reply, and the subsequent pleadings, should have drawn up another proceeding, under Section 10, Regulation XXVI. of 1814, specifying the particular issues he intended to try, and then have directed the parties to produce their proofs. As this was not done, the proceedings of the lower court are incomplete, and the case is remanded, that the points alluded to in the Sudder Court's order of the 27th June 1850, may be tried and determined. Fees to be returned to appellants.

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## ZILLAH BACKERGUNGEE.

PRESENT : W. J. H. MONEY, ESQ., JUDGE.

THE 21ST MARCH 1851.

No. 75 of 1847.

*Appeal from the decision of Moulvee Mahomed Kuleem, Principal Sudder Ameen, dated the 29th September, 1847.*

Joachim Gregory Negose Pogose, (Plaintiff,) Appellant,

*versus*

Koorna Moece, wife of Rajdoollub Sein, deceased, Bhugwan Chunder Sein, Unund Chunder Sein, Jugbondoo Sein, Nubkishore Sein and Gungamunee, wife of Mohun Chunder Rac, daughter of Kishenkaunt Sein, mother of a minor son (name unknown) and Caleckinkur's (deceased) wife, name unknown, (Defendants,) Respondents.

THIS suit was instituted by the plaintiff, to recover from the defendants on account of a howla, called Ram Sunkur Sein, situated in a 12 anna share of his hereditary talook in Joar Ruttundee, pergunnah Jaffirabad Ruffecanuggur, the sum of Company's rupees 1710-0-8-18 kt., inclusive of interest, and a certain sum for expenses on an acknowledged jumma due to his half share, after deducting payments from the year 1243 to the year 1252.

Sreemuttee Koorna Moece, wife of Rajdoollub Sein, deceased, and Bhyrub Chunder Sein, and Jugbondoo Sein, and Nubkishore Sein, and Unund Chunder Sein contended that no such item as "akrajat" expenses had been established in the howla alluded to, nor had they ever paid such an account; that this item had, in fact, been disallowed by the collector in a summary suit brought by the surburakar, Tiluck Chunder Chatterjeea, in the year 1245; that with reference to the fixed jumma of Company's rupees 140-0-1-18 kt., due to the plaintiff for his share, he had omitted to deduct the sum of rupees 1080-8-2, paid by them as could be proved by the receipts in their possession of different dates, leaving only the sum of rupees 319-9-5 due to the plaintiff.

The plaintiff, in his replication, persisted that the item of expenses was an established account in the pergunnah, and as there was no settlement arranged with the defendants, their jumma could not be said to be fixed: that the receipts alluded to were all false, and it was worthy of consideration that, in the year 1250, he had gained

a summary decree for rent for the year 1249, so that if the receipts now filed, dated the 30th Phalgun and 22nd Chyete, of the latter year were correct, they would have been produced in that summary case.

The principal sudder ameen with reference to a proceeding of the collector, dated 9th February 1839, decided that the claim for the item of expenses was inadmissible, and giving credit to certain

1244, 25th Bhadoor,	Rupees	50	receipts of the dates specified in the
" 15th Poos,	"	40	margin, which he considered from
" 17th Maugh,	"	10	their appearance to be genuine and
" 27th Chyete,	"	21	to have been corroborated by the
1246, 11th Maugh,	"	35	evidence of witnesses, he deducted
1250, 4th Phalgun,	"	35	that amount as well as the sum for ex-
" 18th Maugh,	"	46	penses, and gave decree in favor of the
1251, 18th Phalgun,	"	13	plaintiff for rupees 1104-15-8-16 kt.,

at the rate of rupees 140-0-1-8kt., and his share including principal and interest, and costs in proportion with interest, charging the plaintiff with the costs on account of his excess claim, and the defendants with their own costs.

The appellant urges that the collector's proceeding, upon which the principal sudder ameen grounded his rejection of his claim for the item of expenses, was no authority whatever in a matter which the custom of the pergunnah had established, and again, alludes to the fabricated receipts filed by the respondents, one of whose witnesses, Hydur Gazee, had given evidence in their favor in other cases; and further the fact of his cutcherry and that of his sharer, Nicholas Pogose, being at the same place and under one naib at the time, the payments in this case are said to have been made, and the inability of that witness to declare what payments were made to his sharer threw discredit upon his evidence.

I concur with the principal sudder ameen in rejecting the appellant's claim for the item of expenses, for the collection of which he has produced no legal authority: I cannot, however, perceive on what grounds the principal sudder ameen has credited some of the receipts and rejected others: they are either all true or all false, and their general appearance, as regards the writing and the paper, incline me to the latter opinion, the paper of one receipt for the year 1246 being much fresher than one of a subsequent year: the testimony, moreover, of one of the witnesses on the part of the respondents in support of these receipts being for the reason alleged by the appellant unworthy of credit. The appeal, therefore, must be decreed in this respect, and the decree of the principal sudder ameen amended, the appellant will be entitled to receive the amount of rent disallowed by the principal sudder ameen in addition to the sum awarded in his decree, with interest and costs in proportion, and the respondents must pay the costs of appeal as regards the amount allowed to the appellant.

THE 22ND MARCH 1851.

No. 78 of 1847.

*Appeal from the decision of Moulvee Mahomed Kuleem, Principal Sudder Ameen, dated the 29th September 1847.*

Bhyrub Chunder Sein, Koorna Moece, Jugbondoo Sein, Nubkishore Sein and Unund Chunder Sein, (Defendants,) Appellants,

*versus*

Joachim Gregory Negose Pogose, (Plaintiff,) Respondent.

THE appellants were respondents in the previous case, No. 75, and they appeal on the ground that the principal sudder ameen accepted some of their receipts and rejected others, some of which had been attested, and had decreed for the plaintiff, respondent, from a period for which no proofs had been adduced: that all their witnesses were not examined, and that the detailed account of charges at the bottom of the principal sudder ameen's decree was opposed to the order embodied in the decree.

As I have already recorded my opinion regarding the fabricated receipts filed by the appellants, no further remarks are necessary; with respect to the witnesses, it appears that the appellants gave a list of four persons. On the 31st July three were in attendance and entered into recognizances: on the 23rd September two of them gave evidence and no measures seem to have been adopted by the appellants as to the remaining two witnesses. I do not see, moreover, that their evidence, even if adduced, could have outweighed the objections to the receipts, and the incredibility of the testimony of the witness, Hydur Gazeer, mentioned in the previous case.

If there is any clerical error in the detailed account of charges at the bottom of the principal sudder ameen's decree, it will be of no material consequence to the appellants who will be affected by the order embodied in the decree.

Under these circumstances, I dismiss the appeal, with cost.

THE 24TH MARCH 1851.

No. 76 of 1847.

*Appeal from the decision of Moulvee Mahomed Kuleem, Principal Sudder Ameen, dated the 28th September 1847.*

Joachim Gregory Negose Pogose, (Plaintiff,) Appellant,

*versus*

Jugbondoo Sein, Nubkishore Sein, Unund Chunder Sein, Bhyrub Chunder Sein, and Gungamunee, wife of Mohun Chunder Rae, deceased, daughter of Kishenkaunt Sein, and Caleekinkur Sein's (deceased) wife, name unknown, (Defendants,) Respondents.

THIS suit was instituted by the plaintiff, to recover from the defendants the sum of rupees 1431-5-4-5 kt., including principal and

interest, and a certain sum for expenses from the year 1243 to the year 1252, after deducting payments on account of his share in a howla called Rutnessur Doss, kismut Ruttendee and Ramputtee, in a 12 anna share of his hereditary talook Joar Ruttundee, pergunnah Jafferabad Ruffeanuggur. The grounds of the claim and the reply of the defendants were similar to those urged in the previous case, No. 75, with this difference, that from the year 1244, the defendants claimed a deduction of rupees 7-10-3-19 kt. from the plaintiff's jumma, on account of a newly-established market, leaving the sum of rupees 191-0-1-1kt., as the jumma of the plaintiff's share: and after deducting payments, according to the receipts in their possession, they declared there was only a balance of rupees 318-9-7 due to the plaintiff.

The replication of the plaintiff was to the same purport as in the former case, No. 75, denying the genuineness of the receipts and supporting his claim for the item of expenses by the established custom of the pergunnah.

The principal sudder ameen disallowed the claim on account of expenses, and giving credit to certain receipts as noted in the margin, he deducted that amount as well as the claim for expenses, and gave a decree for the plaintiff at the annual rate of rupees 191-1-1, as the jumma of his share for rupees 916-2, principal and interest, and costs in proportion, charging the plaintiff with costs on account of his excess claim, and the defendants with their own costs. The arguments urged by the appellants are precisely similar to those in case, No. 75.

I concur with the principal sudder ameen in disallowing the appellant's claim for expenses, for the collection of which he has produced no legal authority; but I cannot agree with the principal sudder ameen as to the genuineness of the receipts which he has credited. In my opinion their general appearance is *prima facie* evidence against their authenticity, and I reject them altogether. The appeal, therefore, is decreed in this respect, and the principal sudder ameen's order amended, and the appellant will receive the amount included in the receipts, disallowed by the principal sudder ameen, with interest, in addition to the sum decreed to him by that officer, and the respondents will pay the costs of appeal in connection with the amount decreed.

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THE 24TH MARCH 1851.

No. 79 of 1847.

*Appeal from the decision of Moulvee Mahomed Kuleem, Principal Sudder Ameen, dated the 28th September 1847.*

Bhyrub Chunder Sein, Jugbondoo Sein, Nubkishore Sein, and  
Unund Chunder Sein, (Defendants,) Appellants,

*versus*

Joachim Gregory Negose Pogose, (Plaintiff,) Respondent.

THIS case is connected with the previous case, and the grounds of appeal are similar to those urged in a former case, No. 78, as regards some of their receipts being approved of, and some rejected, and all their witnesses not being examined. As I have recorded my opinion against the genuineness of the receipts alluded to, no further remarks seem necessary.

The appeal is dismissed, with costs.

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THE 24TH MARCH 1851.

No. 77 of 1847.

*Appeal from the decision of Moulvee Mahomed Kuleem, Principal Sudder Ameen, dated the 24th September 1847.*

Joachim Gregory Negose Pogose, (Plaintiff,) Appellant,

*versus*

Koorna Moe, wife of Rajdoollub Sein, deceased, Bhyrub Chunder Sein, Unund Chunder Sein, Jugbondoo Sein, Nubkishore Sein, and Gungamunee, wife of Mohun Chunder Rae, deceased, daughter of Kishenkaunt Sein, deceased, and Caleekinkur Sein's (deceased) wife, name unknown, (Defendants,) Respondents.

THIS suit was instituted by the plaintiff, to recover from the defendants the sum of rupees 886-1-1 kt., including principal and interest, and a sum for expenses after deducting payments from the year 1243 to the year 1252, on account of his share in a howla called Ramkishen Sein, kismut Ruttundee, in a 12 anna share of his hereditary talook, pergunnah Jaffirabad Ruffeanuggur.

The defendants denied the claim for expenses, which was an item they had never paid, and observed that after deducting the payments made by them according to the receipts in their possession, there was only a sum of rupees 237-0-8, due to the plaintiff.

The plaintiff, in his replication, contended for the propriety of his claim for expenses, that account being sanctioned by custom in the pergunnah.

The principal sudder ameen disallowed the claim for expenses, and giving credit to certain receipts as noted in the margin, he deducted the amount therein included as well as the sum for expenses, and gave a decree for the plaintiff for rupees 643-12-8-8 kt., including principal and interest, and costs in proportion, charging the plaintiff with costs on account of his excess claim, and the defendants with their own costs.

1243, 27th Bhadoor.

1244, 17th Maugh.

1245, 12th Bhadoor.

The grounds of appeal are similar to those urged in case, No. 75. I concur with the principal sudder ameen in disallowing the claim for expenses, for the collection of which the appellant has produced no legal authority; but I dissent from the principal sudder ameen as to the receipts which he has credited: their very appearance is *prima facie* evidence against their genuineness, and I reject them entirely. The appeal is, therefore, decreed in this respect, and the principal sudder ameen's order amended, and the appellant will receive the amount included in the receipts disallowed by the principal sudder ameen with interest in addition to the sum decreed by that officer, and the respondents will pay the costs of appeal in connection with the amount decreed.

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THE 24TH MARCH 1851.

No. 80 of 1847.

*Appeal from the decision of Moulvce Mahomed Kuleem, Principal Sudder Ameen, dated the 24th September 1847.*

Bhyrub Chunder Sein, Koorna Moece, Jugbondoo Sein, Nubkishore Sein, and Unund Chunder Sein, (Defendants,) Appellants,

*versus*

Joachim Gregory Negose Pogose, (Plaintiff,) Respondent.

THIS case is connected with the preceding one, and the grounds of appeal are similar to those urged in cases, Nos. 78 and 79, as to the principal sudder ameen crediting some of their receipts and rejecting others and not examining all their witnesses. As I have recorded my opinion against the genuineness of the receipts alluded to, no further remarks seem necessary. The appeal is dismissed, with costs.

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THE 27TH MARCH 1851.

No. 1 of 1848.

*Appeal from the decision of Moulvee Mahomed Kuleem, Principal Sudder Ameen, dated the 31st December 1847.*

Ram Kishore Chuckerbuttee, Ram Doolall Chuckerbuttee and Kalachand Chuckerbuttee, (Defendants,) Appellants,

*versus*

Doorga Dass Chuckerbuttee and Ram Soonder Chuckerbuttee, (Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiffs as paupers for possession of 2 canees of land, with mesne profits, laying their damages at rupees 595, 12 annas.

The plaint sets forth that, on the 29th Chyite 1213, the father of the plaintiffs mortgaged for 44 rupees, for one year, 2 canees of land connected with their hereditary talook Neelkaunt Chuckerbuttec, kismut Roodurkud, to Rajkishen Chuckerbuttee, the ancestor of the defendants, and an agreement was written by him to that effect. At the same time it being a condition that Rajkishen was to have possession of the land until the consideration money with interest was realized, and then to be released: that Rajkishen was accordingly in possession of the land, and on his death his heirs, the defendants, have continued in the same position, and realized from its assets the amount of the consideration money with interest and a large sum in excess thereof, and have not relinquished the land: that although the defendants have been in possession for a long time, the plaintiffs did not consider their claim barred by the law, inasmuch as the defendants had not made any foreclosure, and they (plaintiffs) continue to pay the revenue of the talook: that some of their sharers, residing in the district of Dacca, had not joined them in the suit: and as for the 2 canees of land at the rate of 4 rupees, the consideration money with interest was paid up to the year 1224, leaving a balance of rupees 3, 10 annas, 16 gundahs. From that date to the month of Bhadoor 1252 at the rate abovementioned, there would be rupees 219, 5 annas, 6 gundahs, 2 cowrees, 2 krants due—in all rupees 223, 2 gundahs, 2 cowrees, 2 krants Sicca, or Company's rupees 237, 14 annas, the value of the assets and interest in proportion in all Company's rupees 475, 12 annas, and rupees 120, the value of the 2 canees, making an aggregate of rupees 595, 12 annas, at which amount the plaint was laid.

Ram Kishore Chuckerbuttee, Ram Doolall Chuckerbuttee, Juggut Chunder Chuckerbuttee, and Kalachand Chuckerbuttee observed, in reply, that as from the statement of the plaintiffs themselves thirty-eight years and six months had elapsed from the date of the transaction alluded to, and twenty-seven years and six months from the date of the payment of the consideration money,



their plaint was untriable under Regulation III. of 1793, and Construction Nos. 1036 and 813, and they requested that their objection might be first of all disposed of under the Circular Order of the 13th September 1843: they further declared that on the 29th Chyte 1213, Jugmohun Chuckerbuttee, the father of the plaintiffs, sold to their father, Rajkishen Chuckerbuttee, the land in question for Sicca rupees 44, who, and after whose death they (defendants) had been in possession for a very long time without any opposition, had paid the revenue and collected the rents, and from the date of the said purchase nearly forty years had elapsed: that for a long time after the purchase, the father of the plaintiffs received the rent and gave them receipts, and after his death Doorga Doss himself had acted in like manner: they denied any agreements having been given by their father as stated, and commented upon the value of the plaint having been raised in opposition to the law, for the assets being at the rate of 2 rupees, 8 annas per cancee, and the price per cancee rupees 25, the total value would not exceed rupees 50, so that the suit might have been received in the moonsiff's court: that the plaintiffs first mentioned the agreement on limiting the mortgage to one year, and then alluded to the condition by which the land was to be released, when the money was realized for the assets. Such statements being contradictory that the plaintiffs had made Buddeenaut Chuckerbuttee's (deceased) son, Ram Kishore Chuckerbuttee and Jug Dusseree Debee, wife of Ram Coomar Chuckerbuttee, defendants, to serve their own purpose, for they were sharers, and Buddeenaut was a witness to the deed of purchase of their father. They concluded by observing that Sumbho Gungoolee and others, their enemies, were the promoters of this suit.

The plaintiffs, in their replication, declared that the law quoted by the defendants had no connection with the present case, as by Clause 4, Section 3, Regulation II. of 1805, there was no limit to a suit connected with a mortgage; that this very objection had, on a former occasion, been started by Ramkinkur Chuckerbuttee, a sharer of the defendants, but the judge nevertheless decided that there were grounds for their suits: that this said person neither then, nor for a long time after their pauper petition had been accepted, made any mention of rent being paid, and receipts granted as now stated by the defendants: that the father of the defendants had frequently had this land mortgaged to him, and as to the agreement Ramkishore, one of the defendants, was a witness to its execution, and such agreement had invariably been written on plain paper on previous occasions: that the plaint had been correctly laid, and although one year had been written in the agreement as the limit of the mortgage, yet there was a verbal condition that the land was to be released when the consideration money with interest had been realized, and in this manner the amount had been liquidated up to the year 1224.

The principal sudder ameen was of opinion that the land in dispute had been mortgaged to the ancestors of the defendants and not sold: and with reference to the terms of the deed of sale by which the name of the father of the plaintiffs was to be struck off, and that of the father of the defendants recorded in the collectorate, he observed that the defendants had filed receipts in opposition to that arrangement, signed by the father of the plaintiffs, which appeared to have been recently prepared: and as the name of Sheeb Chunder Chuckerbuttee, one of the witnesses to the deed of sale who had given evidence, was not written below the deed but at the corner, there was reason to believe that he was a tutored witness, and as the remaining witnesses, in consequence of their death, had not been produced, the deed could not be said to have been attested: that with reference to Section 3, Regulation II. of 1805, this suit could not be barred by the statute of limitation, which fact was confirmed, moreover, by the proceeding of the judge, dated the 10th August 1846, in connection with this particular case. Under these circumstances the principal sudder ameen gave a decree for the plaintiffs after deducting rupees 44, with interest, with mesne profits and costs, releasing Juggut Desseree and others, absent, defendants, and awarding costs against those who had replied in this case.

The appellants urge that no proof whatever had been adduced in support of the agreement filed by the respondents, and repeated their objections regarding the inaccuracy of the plaint, and declared that, if the real value had been fixed, the plaintiffs could not have been admitted to sue as paupers: that with respect to the receipts commented upon by the principal sudder ameen, it was notorious that a small portion of a talook could not be recorded in the collectorate, and as to the name of Sheeb Chunder Chuckerbuttee being written in the corner, other names were written in the same manner, and at the time the deed of sale was written the small sized paper was in use, as was the case with a deed of sale of the plaintiffs (respondents), dated in the year 1212: that as the respondents had admitted their (appellants') kubala in which there is no allusion at all to a mortgage, it was incumbent on them to prove their assertion relative to the alleged agreement: that the principal sudder ameen had decreed the share of Ramkishore Chuckerbuttee and Jog Desseree Debeca, sharers of the plaintiffs (respondents), who should have been excluded from the suit, and given an order regarding the consideration money rupees 44, and interest, in opposition to the plaint. During the appeal Ramkishore Chuckerbuttee and Jog Desseree gave a petition, denying their collusion in the case, and stating that they had no objections to offer to the claim of the plaintiffs (respondents.)

The respondents adduce no fresh arguments in support of this claim.

The principal sudder ameen having omitted to record any proceeding under Section 10, Regulation XXVI. of 1814, regarding the primary objections of the appellants as barring the suit and not even having alluded to them in his final proceeding, this case might very fairly be returned for the purpose of supplying that omission: as the question, however, can be disposed of in appeal, it will, I think, be more just to do so, and thus prevent the delay incurred by a remand. The principal sudder ameen has proceeded entirely upon the documents furnished by the appellants and rejected their kubala which the respondents admitted, without referring at all to the principal document submitted by the respondent, namely, the ikrar, in support of which no evidence whatever was adduced: the purchase merely of a few canes of land of a talook does not necessarily entitle the purchaser to have his name recorded in the collectorate, and the omission to do so in this case cannot throw discredit upon the receipts filed by the appellants: the acknowledgment, moreover, of the respondents as to their having all along paid the Government revenue of the talook shows that there was no security for such transfer, and as the appellants who have been in possession of the land in dispute must have paid their rent to the respondents, or their father, there can be no valid reason for suspecting the receipts which they have filed: I cannot discover in the proceeding of the judge, dated the 10th August 1846, alluded to by the principal sudder ameen, that the law of limitation, was ever mentioned; the Regulation II. of 1805, quoted by the principal sudder ameen, being of course applicable in the case of a mortgage. But the question for consideration here is whether there was a mortgage or an unconditional sale, and as the respondents have failed to produce any proof whatever in support of the former averment, and all the documents submitted by the appellants lead to a contrary belief, I decree the appeal, reverse the principal sudder ameen's decision, and dismiss the plaint, with costs.

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## ZILLAH BEHAR.

PRESENT : FRANCIS LOWTH, Esq., ADDITIONAL JUDGE.

THE 7TH MARCH 1851.

No. 191 of 1849.

*Appeal from a decision of Moulvee Syed Mahomed Furreedooddeen,  
Moonsiff of Jehanabad, dated the 9th November 1849.*

Sheodyal Singh, (Defendant,) Appellant,

*versus*

Muhadeo Dutt and Kashecnath, for self and as guardian of Madhohram and Ramanund, his minor brothers, (Plaintiffs,) Respondents.

THIS suit was instituted, on the 21st July 1849, to recover rupees 10, the price of a siris tree, which the plaintiffs declared to have been planted by their ancestor, Shcobuksh Singh, on a bank, forming the enclosure of a garden of mangoe trees, belonging to him in mouza Suharee, pergunnah Unchha, and which the defendant had cut down and carried away. They also state that their case was struck off for default on the 18th July 1849, and is now renewed for the above sum, which, in reality, is less than the value of the tree.

The defendant denied the title of the plaintiffs to the tree, which was of natural growth, and situated outside the boundary of their garden; that, in reality, two trees had grown in the same place, one of which the plaintiffs cut and appropriated, whilst they agreed to allow the defendant to take the other, which was done by Gopal Singh, his relative; he also pleaded that this claim was brought solely with the view of obtaining possession of, and establishing a right to property other than the plaintiffs, and therefore the stamp duty was evaded, and the boundaries of the garden not being laid down, the claim should not be entertained.

The moonsiff, considering the claim established, and that 4 rupees was a fair price for such a tree, decreed the case for that sum in favor of the plaintiffs.

The appellant urges that he was prepared to produce proof, but the moonsiff decided the case without allowing him to do so.

The record shows the defendant to have been called upon to file his rejoinder on the 24th October 1849; but no such pleading appears to have been filed, nor is there any trace of his having

offered proof; that the tree in question belonged to the plaintiffs is sufficiently proved by evidence, and as the claim was only for the price of one individual tree, and not for possession of any parcel of land requiring the specification of boundaries to denote its locality, I consider the plea on this point worthless: and as the defendant admits that the plaintiffs cut and appropriated one tree from the same spot, and has produced no proof to support his statement or title to the other, I consider the order of the moonsiff correct, and therefore confirm it, and dismiss the appeal, with costs, without notice to the respondents.

THE 7TH MARCH 1851.

No. 194 of 1849.

*Appeal from a decision of Moulvee Syed Mahomed Furreedooddeen, Moonsiff of Jehanabad, dated the 8th November 1849.*

Sheikh Unwaroola and Ram Suhai, Appellants, (Defendants,) in the suit of Sheikh Beekoo, son, and Musst. Ramzah, wife, heirs of Sheikh Gholam Murtazah, and Chedun, heir of Sheikh Chukoo, (Plaintiffs,) Respondents,

*versus*

Appellants and Chukowrie Lall, for self and as guardian of Ram Suhai, aforesaid, and Lalla Nath Suhai, (Defendants.)

THIS suit was instituted, on the 23rd April 1849, for possession of 3 beegahs of land planted with tal and other trees, in mouza Turar, pergunnah Unchha, valued at rupees 45, and to recover rupees 4-8, amount of rents appropriated during the years 1254 and 1255 F. S., total value of the suit being rupees 49-8.

The plaintiffs state that in the village in question, 10 beegahs, 2 biswas and 8 dhoors of lakhiraj land belonged to their ancestors, and that they have succeeded to the property, which, after resumption in 1244 F. S., was settled in 1842, and a pottah under date 26th August, given to them; the defendants, however, in 1254 and 1255 F. S., took the rents derivable from the trees in question, and thus dispossessed them; they therefore sue for possession and rents, their case having been nonsuited on 2nd March 1849, for a defect in the description of the boundaries of the property, and the suit being laid on a wrong valuation, their claim is now reviewed, the deficiencies being supplied.

Sheikh Unwaroola and Ram Suhai replied that the suit was undervalued, the value of the land only being stated, and as the trees yielded a rental of 4 annas each per annum, their value of rupees 25, should have been added, thus making the value of the suit 74-8, for which an 8 rupees stamp is necessary, whereas the plaint was written on one of rupees 4; they further pleaded that the plaintiffs were in possession of all lands settled with them and

to the extent stated by them, but that no trees existed on those lands, and that the boundaries had been incorrectly stated.

Lalla Nath Suhai replied in support of the plaintiffs' statement, and declared them to be in possession of their lands, for the rents of his share, of which, as proprietor of the village, he always granted receipts, and therefore prayed to be exempted.

The plaintiffs then petitioned the court for the exemption of Chukowrie Lall, on the grounds that Ram Suhai was no longer a minor.

The moonsiff overruled the defendants' objections as to the boundaries of the property, and considered their admission of the plaintiffs' possession equivalent to an acknowledgment of their claim, and therefore their plea as to the non-existence of the trees to be so frivolous as not to require comment, and as Lalla Nath Suhai admitted the claim, it was clear all the defendants, with the exception of Chukowrie Lall, were answerable, and therefore gave a decree against all three defendants.

In appeal arguments similar to those noted in their answer are advanced by the appellants, and further that the moonsiff had no authority to receive the supplementary plaint, exonerating Chukowrie Lall; that the boundaries laid down by the plaintiffs and declared by the moonsiff to correspond with those stated by the appellants, do not agree, and as the parties wished for a local enquiry, he should either have visited the spot himself, or have deputed an ameen; further that the case should not have been decided without the production of either the plaintiffs' pottah, the measurement papers, or the settlement proceeding.

I consider the pleas urged by appellants as to the incompleteness of the investigation correct and valid; the real question is whether the plaintiffs possess any such land as stated by them to be planted with tal trees, and whether the boundaries laid down by them are correct; a local enquiry would have settled both points and should have been made by the moonsiff in person or through an ameen; the production of the plaintiffs' pottah, as well as the khusrah, or measurement paper, the daghs or numbers of which relating to the plaintiffs' lands were duly specified by the appellants, should have been insisted on for the same purpose. The moonsiff, however, appears to have been satisfied with the evidence of a few witnesses in proof of the existence of the trees, which is flatly denied by several parties, apparently deserving of equal credence, on the part of the defendants, and because the boundaries noted by both parties agreed in some particulars, has ruled that no discrepancies on that point exist: I therefore consider the investigation most incomplete and unsatisfactory, and, for the reasons above noted, reverse the order of the lower court, and remand the case for further investigation and local enquiry, which the moonsiff will conduct either in person or through an accredited

ameen; the value of the stamp of appeal to be refunded to the appellants.

THE 7TH MARCH 1851.

No. 195 of 1849.

*Appeal from a decision of Moulvee Syed Humeedooddeen Ahmud,  
Moonsiff of Aurungabad, dated the 9th November 1849.*

Jeolal Singh, and after his demise his sons and heirs, Bishonath Singh, Deepnath Singh, Roopnath Singh and Sreknath Singh, for selves and as guardians of Baboo Sahibzada Singh, minor son of Jungee Singh, deceased, (Plaintiffs,) Appellants,

*versus*

Goordyal, Cowherd, (Defendant,) Respondent.

THIS suit was instituted, on the 2nd April 1849, to recover rupees 42-10-8, principal and interest of a bond, dated 1st Assar 1246 F. S., which, it is alleged, the defendant executed for Sicca rupees 20, stipulating to repay the amount, with interest, in Poos of the following year, but which he failed to do.

The defendant denied the debt and bond, and pleaded that the deed had been fabricated to harass and annoy him, in consequence of his not acceding to the wishes of the plaintiffs in a matter connected with the execution of a decree taken out against Jyemungul Singh, in which defendant's property had also been attached but subsequently released; and that the plaintiffs had assigned no reason for allowing their claim, if true, to remain unadjusted for nine years.

The moonsiff dismissed the case, remarking that of the three witnesses to the bond, one declared his total ignorance of the transaction, whilst the other two, being the plaintiffs' putwaree and ryot, and their evidence contradictory, could not be credited, and further that the report of an ameen, deputed to institute local enquiries, proved the plaintiffs' claim to be incorrect.

In appeal, the arguments noted in the plaint are repealed, and further that the bond was fully and sufficiently proved by two witnesses, and that the ameen's report was collusively prepared during the plaintiffs' absence, of which, though brought to the notice of the court, the moonsiff took no heed.

As the stamp paper on which the bond is written appears to have been purchased by Jeolal Doss, the plaintiffs' putwaree, some four months previous to the execution of the deed, and the document itself, as well as the signatures of the witnesses alleged to have been present on the occasion, and that of the defendant himself, are all stated to have been written by the same party, and one of those very witnesses denies all knowledge of the transaction, and the testimony of the other, a dependant of the plaintiffs, is of a contradictory and therefore unsatisfactory nature, no faith can be

placed on such a deed of the fact of the deputation of the ameen; the plaintiffs must have been fully aware, the order having been passed on the 23rd of October 1849 in the presence of their vakeel, and therefore they are alone to blame for the local enquiry being conducted in their absence; their objections on this point are consequently inadmissible, and as the depositions of several parties taken by the ameen prove the falsity of the claim, I uphold the order of the lower court, and dismiss the appeal, with costs, without notice to the respondent.

THE 7TH MARCH 1851.

No. 198 of 1849.

*Appeal from a decision of Syed Mahomed Ali Ashruff, Moonsiff of Behar, dated the 10th November 1849.*

Syed Fuzzul Hossein *alias* Syed Nedah Hossein, (Defendant,) Appellant,

*versus*

Syed Sadut Ali, (Plaintiff,) Respondent, Chukowrie for self and as guardian of Boodhee, his minor brother, sons of Telokee, deceased, Oozardars.

THIS suit, valued at 2 rupees, was instituted on the 15th July 1848, for the purpose of having two doorways, opened by the defendant, closed. The plaintiff urging that they were of recent date and detrimental to his property: the defendant replied that they were of old date, and opened upon his own property, and therefore no damage could be sustained by the plaintiff.

The moonsiff, after arguing at considerable length to prove the incorrectness of the measurement papers filed by the defendant, declared them to have been altered for the occasion, and considering the evidence of the plaintiff's fifteen witnesses more trustworthy than that of the defendant's three, gave a decree in favor of the plaintiff and directed the doorways to be closed.

In appeal, it is urged, that if the moonsiff entertained any doubts as to the correctness of the measurement papers filed, he should have required the originals for reference from the revenue authorities, and though the moonsiff did visit the spot, no mention is made in his decision as to the facts ascertained by him.

The record shows that the moonsiff was requested to visit the spot, but I can find no trace of his having done so, which, I consider, he was in every respect bound to do, particularly as the land, on which the doorways or passages were declared to open, was claimed by both parties, as belonging to distinct lots or mouzas, and the moonsiff himself entertained strong doubts as to the correctness of the measurement papers filed, which could only be cleared up by local enquiry. I therefore consider the investigation incom-



plete, and local enquiry, to be conducted by the moonsiff in person, requisite: the order of the lower court is therefore reversed, and the case remanded for further investigation with reference to the above remarks: the value of the stamp of appeal will be refunded in the usual manner.

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THE 7TH MARCH 1851.

No. 191 of 1849.

*Appeal from a decision of Syed Mahomed Ali Ashruff, Moonsiff of Behar, dated the 10th November 1849.*

Syed Fuzzul Hossein, *alias* Syed Nedah Hossein, (Defendant,) Appellant,

*versus*

Syed Sadut Ali, (Plaintiff,) Respondent.

THIS suit was instituted, on the 19th March 1849, for confirmed possession of 9 dhoors,  $7\frac{1}{2}$  dhoorkies of land, as pertaining to lot one in mouza Wazceerpore Bygunabad Palee Buzoorg, valued at 15 rupees, 15 annas, the plaintiff urging that the property belonged to him, but as the defendant had, in the preceding suit, No. 198, claimed the land as pertaining to his estate, it was necessary for him to bring this action to have his possession established and confirmed; the defendant replied to the same effect as in the preceding suit, and declared the land to belong to his village Rampore Bygunabad, and that he held a *kuboolcut* of Telokee as ryot of the same.

The moonsiff decreed the case in favor of the plaintiff on the same grounds as those noted in the suit, No. 198; in appeal the arguments already cited in that case are repealed.

As the decision of this case depends entirely on the result of local enquiry, directed in my decision passed this day in suit, No. 198, I reverse the order of the lower court in this suit also, and remand the case for further investigation; the value of the stamp of appeal to be refunded in the usual manner.

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THE 15TH MARCH 1851.

No. 4 of 1849.

*Appeal from a decision of Syed Tufuzzool Hossein Khan, late Sudder Ameen of Behar, dated the 25th January 1849.*

Kunhye Sahoo and Mohun Sahoo, (Defendants,) Appellants,

*versus*

Syed Abdool Rusheed *alias* Shah Jumeec and Musst. Fussehun *alias* Ummun, (Plaintiffs,) Respondents; 1, Shah Hussun Ally; 2, Shah Ameer Ally; 3, Shah Abdool Kureem; and 4, Shah Kumal Ally, Objectors.

THIS suit was instituted, on the 22nd April 1847, to recover rupees 981-5-4, principal and interest, being balance of rents of a farm lease of certain villages in pergunnah Siris, from 1242 to 1251 F. S.

The plaintiffs state, that being possessed of three shares of a sixth share of mouza Bhutuneeah, and three shares of one-third of mouzas Mujholee and Selimpore, together with some lands in Puttoe, acquired by purchase and other ancestral property, and holding a farm lease of one share of the property of Shah Ameeroolah and Musst. Fyzun *alias* Gheesoo, from 1236 to 1244 F. S., they leased the whole to the defendants from 1241 to 1249 F. S., at a jumma of Sicca rupees 634-5, on an advance of Sicca rupees 4401, the pottah being dated 4th Assin 1241 F. S., and the conditions inserted therein to the effect, that of the jumma 330 rupees, 1 anna should be retained by the farmers in payment of the interest of the advance at 10 annas per cent. per mensem, and the remainder be paid to the plaintiffs; that as the lease of Ameeroolah and Fyzun's share would expire in 1244, a further condition was inserted to the effect, that the proprietors might either resume the management of their share or receive the rents from the farmers, defendants; that the defendants took possession of the whole of the property accordingly, and appropriated the rents and profits of all the shares up to 1243, after which the jumma was reduced to the extent noted in the lease of Ameeroolah and Fyzun's share, and defendants retained possession of the plaintiffs' shares only up to 1251: as, however, they have failed to pay up their rents as agreed upon, the plaintiffs now sue for the recovery of the amount noted, after deducting interest due to the defendants on the sum advanced and certain other sums paid.

The defendants denied the correctness of the claim, urging that the plaintiffs had in the first place misstated the amount of Government revenue payable both for their own and Ameeroolah and Fyzun's shares, whilst secondly, the amount of profits receivable by them yearly had been overrated; that, however, all demands had been discharged, and defendants, in fact, had to receive a surplus

from the plaintiffs, according to an adjustment of accounts which took place in 1251, when all receipts, after examination and comparison with the account, were returned to the plaintiffs; the account, or wasil-bakee, having been mislaid, and the fact being known to the plaintiffs, this action had been brought. The defendants further pleaded that the plaintiffs should have sued them summarily in the event of any balance of rent having actually accrued, and by omitting to include in their claim the rents of the two and half years from 1252 to the date of the plaint, they had evaded the stamp duty; the defendants subsequently represented their having found the mislaid wasil-bakee account.

Shah Hussun Ally declared all the lands in Puttoe to belong to him, and the plaintiffs to have no property therein.

Shah Ameer Ally stated the Government revenue of his share to amount to rupees 34, and not 46-3-6, as pleaded by the defendants. Shah Abdool Kurreem and Shah Kumal Ali also represented the amount of the Government demand against their shares, respectively.

The sudder ameen decreed the case in favor of the plaintiffs for rupees 644-8-4, as duly noted in an account attached to the record, and declared them not entitled to the balance, or rupees 336-13.

Against this decision both parties appeal, the defendants in this number and the plaintiffs in No. 6 of 1849, the former urging that their wasil-bakee accounts for 1242 and 1243 F. S. being correct, the amount claimed for those two years as balance of revenue, together with the interest thereon should have been deducted from the plaintiffs' claim, and that had such balance existed, the fact would have been noted in an ikrarnama declared to have been executed relative to some other property: whilst the latter, the plaintiffs declare the deduction made by the lower court to be unjust, and the decision defective, inasmuch as interest, for the period of the investigation of the case and up to date of payment of the sum decreed, has not been allowed.

The only points of consequence to be considered in these two appeals, which must be decided together, are whether the amount of Government revenue stated by the plaintiffs is correct, and, consequently, whether the deduction made by the lower court is proper or not, and whether the defendants' accounts are trustworthy. From the various proofs filed by the defendants to establish their statement relative to the defect in the plaint on the first point, it is very clear that the plaintiffs did misrepresent the facts of the Government demand, and having stated the revenue at a much lower figure than was right with the view of increasing the amount of their profits claimable from the farmers, defendants, I consider the deduction made by the lower court on this account just and proper. It is urged that the defendants having first expressed their inability

to produce the accounts of 1242 and 1243, in consequence of their having been mislaid, and subsequently declaring their recovery, cannot be allowed credit for such documents fabricated for the occasion, and which being on plain paper are inadmissible; the objections raised to these accounts are, I consider, of very little value, and I do not agree in opinion with the sudder ameen as to their insufficiency and consequent rejection; it is generally the custom for parties to have accounts of this description made out on plain paper, and therefore I see no reason for rejecting those filed by the defendants on that score, and as they bear the seals of the plaintiffs, relative to the forgery or fabrication of which no sufficient proof has been adduced, I consider them correct documents, and the defendants entitled to credit for the amount claimed as balance with interest for those years. The other accounts filed by the defendants are not of such value, being both very suspicious in appearance and unsupported by other proof, and therefore I reject them. Under these circumstances the appeal is decreed, and the order of the sudder ameen amended, the sum of rupees 375-9 being deducted, on account of the (2) two years above cited, from the amount noted in his decree, thus leaving a balance of rupees 268-15-4 due to the plaintiffs, on which they are entitled to recover interest from the date of the institution of the suit up to that of payment. The respondents will pay all costs of this appeal, and those of the appellants in the original action be reduced in proportion to the amount awarded.

THE 15TH MARCH 1851.

No. 6 of 1849.

*Appeal from the decision of Syed Tufuzzool Hossein Khan, late  
Sudder Ameen of Behar, dated the 25th January 1849.*

Syed Abdool Rusheed *alias* Shah Jummee, and Musst.  
Fussehun *alias* Uminun, Plaintiffs, (Appellants,)

*versus*

Kunhye Sahoo and Mohun Sahoo, Defendants, (Respondents.)

1, Shah Hosein Ali; 2, Shah Ameer Ali; 3, Shah Abdool Kureem; and 4, Shah Kumal Ali, Objectors.

THIS is the second appeal from the decision of the sudder ameen recorded in the preceding suit, No. 4 of 1849, in which all the particulars of the matters in dispute, together with the grounds of appeal have been already detailed; it is therefore needless to repeat them, and having, by my decision of this day in that case, amending the order of the lower court, declared this appeal to be groundless, I need only refer to the reasons given in that judgment for its rejection, and to declare the appeal dismissed, with costs chargeable to the appellants.

THE 20TH MARCH 1851.

No. 21 of 1849.

*Appeal from the decision of Syed Tufuzzool Hossein Khan, late  
Sudder Ameen of Behar, dated the 12th May 1849.*

Rajah Himut Ali Khan, Appellant, (Defendant,) in the suit of  
Lutchmun Persaud, Respondent, (Plaintiff,)

*versus*

Appellant and Jeetun Singh, Defendants.

THIS is an appeal on the part of the second defendant noted in suit, No. 22, this day decided.

The appellant urges that the plaintiff could not claim foreclosure of the mortgage, as the sum of rupees 132, received by him, should have been first credited to the repayment of the principal, instead of the interest of the sum advanced.

For the reasons given in case, No. 22, I dismiss this appeal also, with costs, without notice to the respondent.

THE 20TH MARCH 1851.

No. 22 of 1849.

*Appeal from the decision of Syed Tufuzzool Hossein Khan, late Sudder  
Ameen of Behar, dated the 12th May 1849.*

Jeetun Singh, (Defendant,) Appellant, in the suit of Lutchmun  
Pershad, (Plaintiff,) Respondent,

*versus*

Appellant and Rajah Himut Ali Khan, (Defendants.)

THIS suit was instituted, on the 24th December 1844, for possession of a third share of mouza Kekureah Bughodur, *aslee-midakhilec* pergunnah Sumoy, in virtue of a mortgage made absolute, valued at rupees 321, 1 anna, or three times the rent roll.

The particulars of this suit are recorded at pages 186 and 187 of the Decisions of this Court for December 1847, or the 7th of which month the decree passed by the then sudder ameen, dated June 26th, 1846, was confirmed in appeal in favor of the plaintiff. On appeal, however, to the Sudder Court, the suit was remanded under date May 3rd, 1848, for further enquiry, relative to the existence and purport of an ikrarnameh cited by the appellant, to determine on the validity or otherwise of certain documents asserted to have been acknowledged as genuine in a previous action, and to receive such further evidence as the parties might adduce.

The sudder ameen recorded his opinion to the following effect: that on perusal of the proceeding held by the judge, under date December 19th, 1844, it was clear that all objections advanced by Rajah Himut Ali Khan respecting the foreclosure of the mortgage,

had been overruled, and the mortgage made absolute; it was therefore unnecessary to consider further any of the objections raised by that party; that Jeetun Singh had not filed the original pottah, and the amanutnameh produced as relating to that deed, merely showed him to have deposited rupees 1000 as security for the due fulfilment of his farming engagement; that in the renewed pottah of the 23rd Jyte 1248 F. S., rupees 2000 are clearly stated as the amount of advance, and as no mention whatever is made therein of the bond debt of rupees 1000, and the conditions specified in that document of 1246 F. S., were rendered null and void by those of pottah. It was clear the bond claim was incorrect, and that the defendant, Jeetun Singh, was entitled to recover only the 2,000 rupees, mentioned in the said pottah and the ikrarnameh of Aughun 3rd, 1250 F. S., and as he admitted this last document, it was vain for him to question the correctness of the mortgage; a decree, therefore, was passed in favor of the plaintiff declaring him entitled to recover possession on the expiration of the lease and payment of rupees 2000 to Jeetun Singh; the costs of the suit being charged to the parties, respectively.

Against this decision Jeetun Singh appeals, urging that as he had to receive rupees 1000 on account of the bond executed in the name of Doolar Singh, and which had been recognised as a correct document in a prior action, and his claim to rupees 1000 on account was established both by the statement of Rajah Himut Ali Khan himself and the evidence of witnesses, the sudder ameen should have awarded payment of those sums also; that the amount of the bond was not mentioned in the pottah, or ikrarnameh, on account of its being a distinct transaction carrying interest, and that the balance of account was struck in the end of 1250 F. S., after the execution of the ikrarnameh, and therefore was not noted therein: he also objects to being saddled with any *share* of the expenses. I have carefully considered this case in all its bearings, and as the appeal by Rajah Himut Ali Khan in No. 21 of 1849, originates in the same decision, it is as well to record the grounds of my dismissal of both appeals in one judgment. In the bond executed by Rajah Himut Ali Khan in favor of Doolar Singh, under date 23rd of Bysakh 1246 F. S., it is stipulated that the amount 1000 rupees should be repaid at the expiration of four years, and two out of three shares of property then in lease to Jeetun Singh on an advance of rupees 1000 are pledged as security, no mention of interest being made; this deed appears to have been filed in previous suits as pleaded: the subsequent pottah of 1248 F. S., and ikrarnameh of Aughun 3rd, 1250, however, both specify the sum advanced by Jeetun Singh against the estate to amount to rupees 2000, namely, 1000 on account of the former pottah, and 1000 lodged as security, the bond debt being in no wise referred to: as both the above documents are of later date than the bond, and their

genuineness is not disputed; all mention of the loan on the bond is omitted, though no valid reason for its non-insertion, on the score of interest as pleaded, is discoverable; the terms of the lease to which the bond referred were altered, and the lease itself thereby cancelled; and it is impossible to suppose the appellant would have submitted to an omission so prejudicial to his interests, if it at the period of the execution of either of these deeds his bond claim was still outstanding. I reject his plea on this point as totally insufficient to prove any other lien against the property beyond that mentioned by the sudder ameen. The account filed in support of the further claim of rupees 1000, I likewise consider untrustworthy; it bears no date and therefore cannot be received as a sufficient document, and consequently is rejected; the ikrarnamoh bears date November 21st 1842, or Aughun 3rd, 1250, and is to the effect that Jeetun Singh would pay yearly rupees 132, on account of the property mortgaged to the plaintiff, from 1250 F. S., till the redemption of the mortgage. It is argued that as this sum exceeded the amount of interest claimable by the plaintiff on account of the mortgage and having been paid to him as per receipts filed, he could not claim the foreclosure of the mortgage, being entitled to recover only the balance of the principal advanced; I do not find these pleas borne out by the facts of the case; certain receipts for the sum above noted are doubtless filed, but cannot be considered of much value, though they are dated in 1250, and therefore must have been executed, if at all, by the plaintiff long previous to Rajah Himut Ali Khan's petitioning the court on the 17th December 1844, relative to the redemption of the mortgage, yet not a syllable on the subject is noted in that petition, nor do I find, as pleaded, that the plaintiff admitted having received such money. I, therefore, consider these receipts spurious, but as the plaintiff accepted this ikrarnamoh, and rupees 2000 are clearly stated therein to be due to Jeetun Singh on account of a loan or advance, he is of course liable for its payment. The appeal is, therefore, dismissed with costs, and the order of the lower court confirmed, without notice to the respondent. .

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## ZILLAH EAST BURDWAN.

PRESENT: J. H. PATTON, Esq, JUDGE.

THE 3RD MARCH 1851.

No. 140 of 1850.

*Appeal from the decision of Pearee Mohun Banerjea, Moonsiff of Kytee, dated 16th March 1850.*

Kumlakaunt Samunt, (Plaintiff,) Appellant,

*versus*

Huri Singh Rai and others, (Defendants,) Respondents.

RECEIPT for revenue paid, action laid at rupees 16.

The plaintiff sues the defendants for a receipt for 16 rupees, as rent paid on account of self and brother, Rasu Samunt, on the 5th Bhadoon 1256, before witnesses, their joint jumma being rupees 38, 10 annas. The gomashita to whom the money was paid, is alleged to have put off the plaintiff from time to time on the plea of press of business when demanding the quittance.

The defendants deny the correctness of the plaintiff's statement as to the amount of the consolidated jumma of self and brother, and declare it to be rupees 52, 12 annas, and affirm that no payments whatever have been made on account of 1256, and that the action has been fraudulently brought with the intent of lowering the fixed revenue.

The plaintiff's rejoinder sets forth that he obtained a decree, No. 2525, from the moonsiff's court in Bysakh 1248, fixing his rent at the amount stated in the plaint, and challenges the defendants' proofs as to the time, manner and circumstances of the enhancement made thereon.

The defendants' reply to rejoinder, purports to show that they held the plaintiff's engagement for the higher rent, stated by them as executed in Bysakh 1250, and proofs of his payment of that rent from that period up to 1255.

The moonsiff rules that there is no occasion in this suit to enter into and determine the question of the disputed amount of rent, but to decide whether, or not, the plaintiff paid the alleged 16 rupees



on account of revenue and failed to get an acknowledgment of the payment. In his estimation the two witnesses examined in support of the payment are not entitled to credit, because they have on a former occasion given evidence against the defendants, and one of them admits that he has sued them in a similar action to the present in his (the moonsiff's) court. The plaintiff, moreover, is unable to adduce further testimony, although allowed six weeks to do so, and it appearing by the affidavit of the defendant, Kartick Chunder Mookerjea, who is the gomashtha of the defendant talookdar, Huri Singh Rae, and the only party able to attest the village accounts filed by him that no rent has been paid by the plaintiff for 1256, the moonsiff dismisses the suit, and decrees for the defendants.

The plaintiff appeals against the decision, and thinks it hard that his witnesses should be disbelieved, because they have borne testimony against the defendants on a former occasion, and one of them has brought an action against them, and contends that the moonsiff should have cited his absent witnesses if he thought the evidence of those present insufficient to establish his claim, and has acted contrary to law and practice in taking the oath of the defendant Kartick Chunder Mookerjea, referring particularly to the precedent ruled in the Sudder Dewanny Adawlut's Decision of 7th August 1847, *in re* Shamamohun Bose, appellant, and Ramnerain Mookerjea, respondent.

I see no reason to dissent from the moonsiff, on the grounds of his rejection of the appellant's witnesses. The fact of their having before given evidence against the parties concerned is a *prima facie* proof of enmity and unfriendly feeling towards them, and the fact of one of them having instituted legal proceedings against their principal, the respondent, Huri Singh Rae, clearly disentitles his testimony to be regarded as unprejudiced and impartial. The precedent quoted by the appellant is inapplicable. In the case to which it refers four defendants were released from the operation of the suit, and discharged without the plaintiff's permission and concurrence, and subsequently summoned and examined as witnesses for the defence. This was manifestly irregular and tantamount to a vitiation of the proceedings which sanctioned the measure. In the present instance such has not been the case. No defendant has been released or discharged, and one of them merely sworn to the truth of documents immaterial to the issues of the suit, and attestable only by him. He was the gomashtha of the talookdar, the preparer and custodian of the village accounts which none but he could prove. It was clearly the business of the appellant to move the court for the production of further evidence, if that already brought was insufficient, and not the business of the court to seek such further proof. The appellant was allowed ample time to bring his case to maturity, and has no reason to

complain of the moonsiff's want of attention to his requisitions. I see also that of the four persons cited by him, to prove the alleged payment of the revenue, three have been examined, and do not support the fact. I can find no ground for interfering with the award made by the court of first instance, and affirm it.

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THE 4TH MARCH 1851.

Case No. 142 of 1850.

*Appeal from the decision of Mr. J. S. Bell, Sudder Moonsiff of East Burdwan, dated the 18th March 1850.*

Gunna Bewa, (Plaintiff,) Appellant,

*versus*

Srimunt Singh and others, (Defendants,) Respondents.

REFUND of money taken as a bribe, action laid at rupees 10-1.

The plaintiff charges the defendants with bribery and corruption, and brings this action to recover the amount corruptly and unlawfully appropriated under the following circumstances. The defendant, Srimunt Singh, admired and wished to become intimate with the daughter of the plaintiff who discountenanced the intercourse, and in doing so exasperated the defendant to such a pitch that, being a police officer, he, in conjunction with others, also attached to the police force, trumped up a case of goat-killing against both mother and daughter, and under its cover extorted the sum of 10 rupees.

The plaintiff appealed to the criminal court for redress, but her case was dismissed by the magistrate.

The defendant, Srimunt Singh, repudiates the plaintiff's allegation, and ascribes action to the influence of the evil-disposed persons in the habit of frequenting the plaintiff's residence, whom, he alleges, it is his duty as a police officer to warn off and disperse when unlawfully assembled. He pleads the plaintiff's suit barred, because she has omitted to state in her plaint that it is in annulment of the magistrate's order that she brings her action, and because she has committed a lache in his official designation, styling him a burkundauze or phauridar, instead of a jemadar. He concludes by remarking that he is a Rajpoot by caste and the plaintiff a Bagdee, and that it is not probable, under such circumstances, that such violent opposition as that alleged should have been made to his intimacy with the daughter, had he felt disposed to cultivate it.

The other three defendants, namely, Puran, Narain and Judistir, are chowkeedars, acting under the defendant, Srimunt Singh's orders, and in their reply generally corroborate the statements made in his defence.

The plaintiff's rejoinder maintains that her action can lie under the provisions of Clause 3, Section 9, Regulation XIII. of 1793, and the Construction No. 58, and that she has committed no lache either in mis-styling the defendant, Srimunt or omitting to state in plaint that her object in bringing action was to cancel the magistrate's award.

The moonsiff rules the suit unproven, and decrees for the defendants. He disbelieves the evidence of the three witnesses cited by her to prove the extortion, because he cannot conceive it possible that a Government officer would demand and receive a bribe in the public manner represented. He is also satisfied from the ameen's local enquiry that there is no ground for the action, and that the claim is fraudulent and set up from malicious motives, the more so that the immediate neighbours of the plaintiff are unable to speak to the facts, and disclaim all knowledge of the transaction detailed by her.

The plaintiff is dissatisfied with the award, and appeals against it, but the grounds of her objection are general and embrace exceptions to the views adopted and inferences drawn by the court of first instance.

I have carefully examined the record of the moonsiff's decision, and see no reason to dissent from the conclusions he has drawn. The evidence adduced in support of the issues pleaded by the appellant in the original suit, is manifestly defective and disentitled to credit from discrepancy and contradiction. I incline, moreover, to the moonsiff's opinion that it is highly improbable that an act of bribery and corruption, similar to the one alleged to have been perpetrated in these proceedings, should have been done with such publicity and utter disregard to future consequences. I therefore affirm his judgment, and dismiss his appeal.

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THE 5TH MARCH 1851.

Case No. 6 of 1850.

*Appeal from the decision of Nazeerooddeen Mahomed, Acting Sudder Ameen of East Burdwan, dated 25th March 1850.*

Muharajah Mahtab Chund Buhadoor, Rajah of Burdwan, (Plaintiff),  
Appellant,

*versus*

Ramchurn Mitre, (Defendant,) Respondent.

THIS was an appeal to recover interest accruing subsequently to the institution of a suit, in which the principal and interest, equivalent to the principal, had been adjudged.

The claim was laid at rupees 16-5, but tacitly disallowed by the court of first instance.

The original action was for arrears of revenue and the interest accruing thereon had accumulated so as to exceed the principal antecedent to the institution of proceedings to recover. It was decreed to the appellant in every particular, save the interest which had accrued *pendenti litæ*, but all mention of that item was omitted in the decree, and the claim thus virtually disallowed. He, therefore, filed this appeal and prayed

S. D. A., dated 15th July 1808.

S. D. A., dated 19th December 1823.

for the removal of the interdiction, pleading the justice of the case

and the principle laid down in the precedents noted in the margin, in favor of his application.

I dismissed the appeal for the reasons set forth in my judgment of the 20th of June 1850, at pages 113 and 114 of the Decisions of East Burdwan for that month, and the case has been remanded for a fresh trial by the superior court, on special appeal on the grounds detailed in page 560 of their decisions in November and December last.

It would be a small matter for me to explain the inconsistencies with which my judgment has been charged in the remarks of the court in sending back the case, and point out particulars in which those remarks are inapplicable; but I content myself with making some verbal alterations in my former statement of the case, and have no doubt that the amended version will be found less erroneous and less obnoxious to the imputation of misconception.

As regards the judgment and the grounds on which it is made, my mind is unchanged, and I hereby repeat and affirm it. The claim made by the appellant was inadmissible, and in whatever way he did so, the acting sudder ameen was perfectly right to reject it. The award of interest in excess of principal in both the precedents quoted in support of appeal was manifestly made on the consideration that the delay in the final adjustment of the suit, which was considerable, was ascribable to the courts through which they passed, and not to procrastination on the part of the suitors. In the present appeal the case is diametrically opposite, the accumulation (of interest in excess of principal) having accrued prior to institution of action, and the whole delay chargeable on the suitor. I reiterate my former opinion that this is no case for the exercise of the discretion indicated in the precedents quoted to the exclusion of the broad principle maintained in Section 6, Regulation XV. of 1793, and overrule the appeal.

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THE 6TH MARCH 1851.

Case No. 139 of 1850.

*Appeal from the decision of Peare Mohun Banerjea, Moonsiff of Kytec,  
dated 14th March 1850.*

Utumchurn Dut and others, (Plaintiffs,) Appellants,

*versus*

Ramesur Dut and others, (Defendants,) Respondents.

VALUE of fish unlawfully appropriated, action laid at rupees 31-10-13-1-1.

The plaintiffs sue the defendants for the plunder of fish, appertaining to a tank in which they held a 2 anna share, the quantity so appropriated being 50 maunds of large and 20 maunds of small fish, of the value of which they claim their quota.

The defendants deny the unlawful appropriation, and ascribe suit to annoyance on the part of the plaintiffs, in consequence of their refusing to drag the tank in the absence of the other sharers and preventing the plaintiffs from doing so. They contend that the tank is incapable of containing the quantity of fish alleged to have been plundered, and maintain that the action is barred because the plaintiffs have made only one of the sharers a party to the suit. They declare, moreover, that they have done this fraudulently, in the hope of inducing the sharer sued to confess judgment.

The moonsiff, in his decision, propounds three points for enquiry and adjustment, *i. e.*, whether the suit is barred in consequence of the alleged lache, whether the tank is capable of holding the quantity of fish said to have been plundered, and whether the fact of the unlawful appropriation is supported by evidence. He rules with regard to the first that in a suit of the nature of the present, the objection is not valid, as it is no speculative point, but a matter of fact, which is to be determined. With advertence to the second, he remarks that the enquiry fails to establish the capacity of the tank to the extent alleged by the plaintiffs, and determines in reference to the third, that the evidence is defective and insufficient to support the issue pleaded. An ameen was directed by the moonsiff to institute a local enquiry into the merits of the case, but the plaintiffs refused to have it, and would not lodge the expenses necessary to his deputation. The moonsiff therefore dismisses the suit, and decrees for the defendants.

The plaintiffs appeal against the decision, and contend that the moonsiff should have decreed in their favor to the extent of their share in the value of 22 maunds of fish, alleged by their witnesses to have been plundered, and not dismissed their entire claim, and justify their refusal to deposit the ameen's expenses on the plea that they considered the measure uncalculated to benefit their cause.

The grounds of appeal are utterly untenable. The moonsiff could not possibly have made an award contrary to the terms of

the plaint, and on evidence at variance with its purport, when that evidence was in itself uncredit-worthy, and it is difficult for the appellants to have assigned a more frivolous and unsatisfactory reason for foregoing the admitted advantages of a local enquiry. The record, moreover, shows that the tank could not contain the amount of fish said to have been taken out of it, and that the suit has been brought by the complaining party in consequence of the resistance, both active and passive, made by the respondents to their dragging the tank in the absence of the other sharers, and with the view of getting them (respondents) into trouble. I therefore dismiss the appeal.

THE 6TH MARCH 1851.

Case No. 144 of 1850.

*Appeal from the decision of Cazi Nazeerooddien, Moonsiff of Indoss, dated 30th March 1850.*

Gomani Dasi, (Objector,) Appellant,

*versus*

Tarachand Ghose, (Plaintiff,) Respondent.

Ojidanath Bose, (Defendant,) Respondent.

BOND DEBT with mortgage, action laid at rupees 30-12.

The plaintiff sues the defendant for debt on mortgage.

The defendant confesses judgment but pleads re-payment.

The objector claims the mortgaged land as her purchased property, and declares the action a collusive proceeding between the plaintiff and defendant to deprive her of her rights. She admits that the land originally belonged to the defendant, whom, in conjunction with others, she sued for maintenance and obtained a decree, in execution of which it, together with other land, was attached and sold, and purchased by her.

The moonsiff decrees for the plaintiff, on the admission of claim by the defendant and proof of debt and bond, and rules that the issues pleaded in objection cannot be determined without a separate action on the part of the objector.

Against this judgment the objector remonstrates and contends in appeal that she has a right to be heard.

I concur in the justice of the appeal, and think that the third party is entitled to have her claim to proprietorship enquired into and determined. I, therefore, reverse the moonsiff's decision, and remand the case for a fresh trial on a consideration of the issues pleaded in objection.

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THE 12TH MARCH 1851.

Case No. 143 of 1850.

*Appeal from the decision of Munmohun Baboo, Moonsiff of Khundghose, dated 19th March 1851.*

Jitu Surma and others, (Appellants,) Plaintiffs,

*versus*

Kadirbuksh and others, (Defendants,) Respondents.

RECEIPT for rent, action laid at 13 rupees.

The plaintiffs sue the defendants for a receipt or acknowledgment for 13 rupees paid as rent for 1255, being balance of a *punchiki jumma* of 41 rupees, registered in their names on account of the village of Majerdunga, the property of Umjid Ali and others. The payment is alleged to have been made on this wise. The sub-lessee of the estate, the defendant, Kadirbuksh, enforced the provisions of Regulation V. of 1812 against the plaintiffs, and attached their crops for arrears of revenue, when matters were accommodated and the claim settled for rupees 26, 10 annas, of which amount 13 rupees were paid to his gomashtha, the defendant, Srinath Rac, by two separate parties, but no acknowledgment given.

The defendants admit the payment of rupees 11, 13 annas, (incorrectly stated rupees 10-13, in defence,) and the defendant, Srenath Rai, gives the following detail in connection with those payments. He says that the plaintiffs assigned over for the balance 9 rupees of rent, due to them by under-tenants, of which amount one Sonatun Metea gave him 7 rupees, 13 annas; that he returned him, as voucher for the payment, a memorandum, engaging to give a regular quittance to the plaintiff, Jitu Surma, on his presenting the document in question. That after that another payment of 4 rupees, (3 rupees cash, and 1 rupee due by him, gomashtha, to the payee on account of the purchase of a cow) was effected by Pershad Metea, for which he gave an acknowledgment, and concludes by stating that subsequent to this a settlement of accounts took place between him and the defaulters, and a balance of rupees 3, 9 annas struck against them, which claim they virtually admitted and confirmed by attaching their signatures to the account.

Srimunt Dulal files an objection and sets up a proprietary claim to the land in question as attached to his talook Kutara, and not included in the *punchiki jumma* of Majerdunga, the property of Chowdri Umjid Ali and others.

Chowdri Umjid Ali and others file a similar plaint maintaining his proprietary right.

The moonsiff dismisses the suit, on the ground that the plaintiffs have not proved the payment for which they seek a quittance, and rules that the action has been fraudulently brought at the instance of one of the claimants, Chowdri Umjid Ali, who has colluded with the

plaintiffs and defendants, with the view of obtaining some award of court calculated to impugn and prejudice the proprietary claim advanced by the rival talookdar, Srimunt Dulal.

The plaintiffs appeal against the decision, and contend that the defendants have not established their pleas by any documentary proofs, such as village accounts and the like, and that the collusion which the moonsiff ascribes to them is quite unnecessary, as the proofs it contemplates are already available; the principal sudder ameen having determined in a suit adjudicated by him that the land in question is attached to, and forms part of the *punchiki jumma* of Majerdunga.

I have carefully reviewed the record and coincide in opinion with the moonsiff that the appellants have made out no case. The two alleged payments are attested by the persons making them, and none others, and as they were made at different periods, there is only one witness in support of each and he an interested party.

The appellants again are unable to produce any vouchers of the payments, and under such circumstances the proof of the defensive pleas is, to my mind, perfectly immaterial. I affirm the moonsiff's decision, and dismiss the appeal.

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THE 12TH MARCH 1851.

Case No. 157 of 1850.

*Appeal from the decision of Munmohun Baboo, Moonsiff of Khundghose, dated 19th March 1850.*

Chowdri Umjid Ali and others, (Claimants,) Appellants,

*versus*

Jitu Surma and others, (Plaintiffs,) Respondents.

Kadirbuksh and others, (Defendants,) Respondents.

Srimunt Dulal, Respondent, Claimant.

THIS appeal arises out of the foregoing judgment, as passed by the court of original jurisdiction, and is brought to set aside the unfavorable impression calculated to be made with reference to the appellants' asserted title of proprietary right to the land in dispute by the disparaging remarks made in the course of it.

This can scarcely be termed an appeal, as it in no way impugns the merits of the judgment. In that view, therefore, I dismiss it, but as the moonsiff's remarks are both gratuitous and uncalled for, and not without their possible influence of prejudice alike to the appellants' reputation and the cause they espouse, I do not think it proper that they should go forth to the world unaccompanied by some recorded protest against their publication. I, therefore, draw up this minute and append to the record, and my object in doing so is to neutralize any injury to the appellants' interests that may



have been effected by the terms of the moonsiff's award. In doing this, however, I must clearly be understood to express no opinion as to the merits of their claim ; of which I have not yet had an opportunity of being made cognizant.

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THE 13TH MARCH 1851.

Case No. 319 of 1850.

*Appeal from the decision of Cazi Nazeerooddeen Mahomed, Moonsiff of Indoss, dated 21st August 1850.*

Srimunt Dulal, (Plaintiff,) Appellant,

*versus*

Sishtidhur Ghose, and others, (Defendants,) Respondents.

Kelukkishen Baboo, Claimant.

Chowdri Busurooddeen and Chowdri Umjid Ali, Claimants.

BALANCE of rent, action laid at rupees 2-13-14-1.

This is a suit under Section 8, Regulation VIII. of 1831, for balance of rent on account of the year 1255, the plaintiff being the alleged proprietor of the village of Kutora, and one of the defendants, Sishtidhur Ghose, the recorded holder of a *jumma*, amounting to rupees 6-11-13, in which the other defendant, Rajib Ghose, is a sharer. Both the defendants repudiate the claim and all connection whatever with lands appertaining to the plaintiff, declaring themselves to be tenants of the objectors, Chowdri Busurooddeen and Chowdri Umjid Ali, and cultivators of the land attached to the *punchiki mehal* of village Majerdunga, their alleged property.

The plaintiff's rejoinder goes to ascribe the defensive pleas set up at the instigation and advice of the claimants, the Chowdries, to wrest the land in dispute from his Kutora possessions.

The claimants, Busurooddeen and Umjid Ali, file a protest and advance a proprietary title to the land, declaring the suit a fraudulent and collusive proceeding to deprive them of their right.

The other objector, Kebulkishen Baboo, is the sudder putneedar, and files an appearance simply to protect his interests, should there appear any disposition to invade them on the part of the plaintiff, his sub-lessee.

The moonsiff rules that although the plaintiff produces three sets of village accounts, the first from 1249 to 1252, under the signature of Kenaram Ghose, the second for 1253-54 under the signature of Gourhuri Nag, and the third for 1255, under the signature of Ramchunder Chukurbutti, yet these papers are inoperative as exhibits in proof of claim, because they have been filed under the attestation of other parties, who were not gomashas of Kutora until long subsequent to the date of the papers they attest. One of them, Sishtidhur Palit, affirming that he was appointed in Aughun 1256, and the other Ramkulp Sein in Assar of the same

year. He also records it as his opinion, that the *lowazima* papers themselves are open to suspicion, as there is a want of uniformity of size and shape in parts of them, and that the plaintiff's failure to establish the defendants' possession and cultivation by the testimony of their immediate neighbours and in the local enquiry is fatal to the validity of his claim.

He remarks, in conclusion, that in conformity with a request contained in the plaintiff's rejoinder, he sent for and interrogated the defendants on the subject of their liability, and that they distinctly and unreservedly repudiated it. Under these circumstances he dismisses the suit.

The plaintiff appeals against the award, but his objections embrace generally a dissent from the views adopted by the moonsiff and exception to their soundness and candour. He contends that the enquiry has gone beside its legitimate sphere and object, and in its result determine a disputed question of proprietary right much to the prejudice of his interests.

I think the moonsiff's investigation somewhat irrelevant and out of course, but the appellant has no right to find fault with it on that score, as it was he who raised the issues and insisted on their determination. This was a suit for balance of rent on account of the year 1255, and the only points to be adjusted in it were whether the demand was correct and the arrears due by the alleged defaulters. This should have been the end and object of the moonsiff's enquiry, and though I cannot blame him for disposing of the issues brought before him in furtherance of the purpose, yet his judgment would have pleased me better had it not in its course virtually settled the disputed question of proprietorship. While he has done the latter, however, he has not left undone the former, and I see no reason to object to the award he has made with reference to it. The claim was not substantiated, and he very properly rejected it; but his award must not be allowed to extend to the settlement of the proprietary question, which is a matter between the plaintiff on the one part and Umjid Ali and others on the other, and must be considered still open to judicial adjudication. This dispute is, in my opinion, the origin and basis of the two preceding and four succeeding cases.

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THE 13TH MARCH 1851.

Case No. 320 of 1851.

*Appeal from the decision of Cazi Nazeerooddeen Mahomed, Moonsiff of Indoss, dated 21st August 1850.*

Srimunt Dulal, (Plaintiff,) Appellant,

*versus*

Dusrut Surma, (Defendant,) Respondent.

Kebul Kishen Baboo, Claimant.

BALANCE of rent, action laid at rupees 13, 4 annas.

This case is identical with the foregoing, the only difference being the party sued. The grounds of claim are the same, the defensive pleas based on the same principle, the same protest advanced by the objectors, the same arguments assumed for the decision, the same award and the same objections in appeal. The same judgment must rule the appeal.

THE 13TH MARCH 1851.

Case No. 321 of 1850.

*Appeal from the decision of Cazi Nazeerooddeen Mahomed, Moonsiff of Indoss, dated 21st August 1850.*

Srimunt Dulal, (Plaintiff,) Appellant,

*versus*

Kashinath Mundul and others, (Defendants,) Respondents.

Kebul Kishen Baboo, Claimant.

BALANCE of rent, action laid at rupees 2-13-13.

The same remarks apply as in the preceding case, and the same judgment must rule the appeal.

THE 13TH MARCH 1851.

Case No 322 of 1850.

*Appeal from the decision of Cazi Nazeerooddeen Mahomed, Moonsiff of Indoss, dated 21st August 1850.*

Srimunt Dulal, (Plaintiff,) Appellant,

*versus*

Sunkur Ghose, (Defendant,) Respondent.

Kebul Kishen Baboo, Claimant.

BALANCE of rent, action laid at rupees 7, 5 annas.

This case is identical with the three foregoing, and the same remarks are applicable as set forth in judgment, No. 319.

THE 13TH MARCH 1851.

Case No. 323 of 1850.

*Appeal from the decision of Cazi Nazeerooddeen Mahomed, Moonsiff of Indoss, dated 21st August 1850.*

Srimunt Dulal, (Plaintiff,) Appellant,

*versus*

Bhowanund Surma and others, (Defendants,) Respondents.

Kebul Kishen Baboo, Claimant.

BALANCE of rent, action laid at 4 rupees.

This case is identical with the four preceding ones, and the same judgment rules the appeal.

THE 27TH MARCH 1851.

Case No. 5 of 1850.

*Appeal from the decision of Moulvie Fuzul Rubi, Principal Sudder Ameen of East Burdwan, dated 12th March 1850.*

Gopal Gobind Nundi, (Defendant,) Appellant,

*versus*

Bhugwan Chunder Gui, (Plaintiff,) Respondent.

Premye Dasi and others, (Defendants,) Respondents.

REVERSAL of summary award in execution of decree, action laid at rupees 33.

The plaintiff affirms that he holds on a perpetual lease at 1 rupee per annum, 13 cottahs of waste land in the village of Suluntu, on which are two clumps of bamboos; that the lease was executed in his favor by the landlord Muriamunissa Bebee and others in 1247, and that he holds proofs of possession and title. He further alleges that in consequence of a feud between him and the defendants and others, the latter caused an action to be brought against him for 1 cottah of the land in dispute, through the agency of one Premye Dasi, (one of the respondents in this appeal) which claim was non-suited; that a similar attempt at annoyance was made by the same party through the same agency, a short time afterwards, in a suit regarding the cutting of trees and bamboos on the land in question, which was also struck off, and that, failing in these endeavours, he instituted a collusive suit against the said Premye Dasi for debt, and, getting her to admit claim, obtained a decree and took out execution, attaching the land in dispute as her alleged property; that he, the plaintiff, filed his protest before the moonsiff and succeeded in effecting the release of the property; but that the defendant appealed summarily to the judge against the moonsiff's

decision, and in annulment of it got an order for sale, to set aside which the present action is brought.

The defendant, Premye Dasi, in her reply, declares the land in dispute is the *lakhiraj* of Rajub Chunder Biswas, consisting of 15 cottahs, and charges the plaintiffs with falsifying its boundaries. She avers that her husband's father, Kururam Gui, got a lease of the land from the ancestors of the said Rajub Chunder, built a dwelling house on it, and after a time died; that he was succeeded by her husband, Helaram, who subsequently purchased the land *benamee* in the name of her brother Kartik Chunder, from Rajub Chunder, and got the deed of sale registered; that he planted a clump of bamboos on the land, and dying was succeeded by her and the infant Bhubun Mohun. She further states that the defendant, Gopal Gobind Nundi, obtained a decree of court against her and taking out execution, attached, sold and purchased the property in question, and admits having brought an action against the plaintiffs for cutting down trees and bamboos appertaining to the land, and being nonsuited owing to some informality in the plaint. She draws attention to the plaintiff's admission of her purchase of 5 cottahs of *lakhiraj* land in reply to the forementioned suit, which admission they deny in their plaint in the present action, and concludes by declaring the land *lakhiraj*, and not *mal* as stated in plaint.

The defendant, Gopal Gobind, corroborates the above, in his reply, and says that he attached the land as Premye's *lakhiraj*, and purchased it on sale in execution of his decree. The talookdars file a petition in support of plaint.

The principal sudder ameen rules in his decision that the point to be determined in this enquiry is whether the land in dispute is the plaintiff's *mal* or the defendants' *lakhiraj* property. In order to a determination of the question, he refers the matter to the collector, who decides in favor of the defendant, and pronounces the land rent-free, principally on the ground that the lord of the soil entered no protest or claim pending his investigation. But the principal sudder ameen rejects this view of the collector, and ruling that the necessary objection was duly made before him, declares the land as *mal*, particularly as the defendant has failed to adduce any documentary proof in support of title in the shape either of original grant or collectorate *taiqad*, or register. The principal sudder ameen also rejects the validity of the deed of sale under which the defendant Premye alleges her husband's purchase, because none of the witnesses subscribing that instrument are alive to attest it, though sworn to by three persons present on the occasion that the transaction took place. His suspicions as to its genuineness are, moreover, awakened from the circumstances of the seller's name on the deed being

apparently written in darker and fresher-looking ink than the body of the instrument, and some discrepancies being apparent in the evidence regarding the actual person who effected the *benamée* purchase, one ascribing it to her husband and another to his elder brother.

He also regards the husband's name (who is the avowed purchaser) appearing as a subscribing witness to the deed as a fact inimical to its authenticity, be the purchase real or fictitious, and notices the irregularity of the want of date of registration as another indication of its unsoundness. Under all these circumstances he gives both issues against the defendants, and, ruling that the lease produced by the plaintiff, backed by the favorable representation of the landlord and supported by the testimony of three witnesses, together with three rent quittances for 1249, 1250, and 1254, are conclusive evidence of their claim and title, decrees for them and annuls the summary award, and the sale effected under it.

The defendant, Gopal Gobind, appeals against the decision, and contends that the views taken by the principal sudder ameen, in his judgment, are erroneous, both in a legal and judicial point of view, the proclamation enjoined under Section 25, Regulation XIX. of 1793, not requiring original grants and collectorate *tailads*, or registers, to be filed in proof of claim to homestead lands, tanks and gardens, and the boundaries of the land sought as set forth in the plaint being at variance with those recorded in the lease filed in support.

This appeal was first heard on the 30th of July, 1850, and perceiving the appellant's latter objection well founded, I admitted it at once, leaving the further consideration of its merits when argued before me in the presence of both parties.

In the mean time I deputed an ameen to enquire and report whether the land in dispute was identical with that described in the plaint and lease, or distinct from it, and if the former, what was the cause of the disagreement in the boundaries set forth in those two documents. The ameen's report generally favored the latter view, and the inference drawn from it was that the discrepancy was in a great measure owing to the eastern boundary being omitted in the lease.

After a long and patient hearing of the arguments *pro* and *con*, I have come to the resolution that the principal sudder ameen's judgment is incorrect and cannot be maintained. He first rejects the collector's disposal of the question of *mal* or *lakhiraj*, because the landlord filed the necessary protest in his\*  
 \* Principal Sudder Ameen. court; but he has lost sight of the fact that the virtue of the protest lies in its being laid at the proper time and before the proper tribunal, which has emphatically been disregarded

in the instance under review. He again disallows the appellant's title, because he has failed to adduce a *sunrud* or *taidad* in proof, when he should have remembered that the law does not require such evidence in support of such claim. The validity of the original deed of sale under which the appellant seeks to obtain his rights, is next called into question by the principal sudder ameen, on the ground that the subscribing witnesses do not attest it: but it is not unreasonable to believe the appellant's statement that none of them is living to do so, considering that the instrument was executed upwards of 22 years ago, nor fair to reject the only evidence available under the circumstances, namely, the testimony of parties present on the occasion of the transaction, which he offers. I do not lay any steps on the exception taken to the signature of the seller by the principal sudder ameen, as the deed might have been signed with ink other than that used in engrossing the contents, or even with the same with a greater quantity taken up by the pen. As regards the trifling discrepancy noticed in the evidence touching the actual *benamie* purchaser, it is to my mind easily and naturally to be accounted for by the irregularity and confusion attendant on a fictitious transaction of the sort, to which also must be ascribed the insertion of the name of the avowed purchaser as a subscribing witness to the deed, but whatever doubts may have been generated in the mind from the above noticed informalities on the subject of the purchase by Premye, they are dispelled by a copy of a decree filed this day by the appellant, in which the respondent makes mention of, and acknowledges the transaction as effected by her brother Kartik Dey, and in making the admission designates the land so purchased as *lakhiraj*. This circumstance is fatal to the respondent's present plea, as he cannot be allowed to claim as a *mal* tenure what he has specially declared to be *lakhiraj*. On a comparison, moreover, between the boundaries set forth in the plaint and lease, some incongruities are perceptible, but the fraud meditated by the action lies in the omission of the eastern boundary in the latter, and attempt to appropriate the *lakhiraj* parcel situate in that direction, and this fact, to my mind, goes far to prove the landlord's complicity viewed in connection with their support of the respondent's views. The proofs of possession also tendered by the latter are defective, the quittances being for broken periods, or rather their sequences being wanting between 1250 and 1254. Under these circumstances, I annul the principal sudder ameen's order, and confirm the sale it cancels.

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THE 31ST MARCH 1851.

Case No. 4 of 1850.

*Appeal from the decision of Mahomed Saem, Sudder Ameen of East Burdwan, dated 25th June 1849.*

Shibupurshad Dut, (Plaintiff,) Appellant,

*versus*

Ramchunder Mokerjea and others, (Defendants,) Respondents.

ACTION to recover revenue twice paid, laid at rupees 302-15-5.

The plaintiff is the *durputneedar* of the talook of Rambati, and alleges that he has twice paid the rent of his under-tenure for the second six months of 1248, on the first occasion to Ramchunder Mokerjea, the guardian of the minor putneedars of Bhaduria, Nubgopal Bhuttacharj and Nuffur Bhuttacharj, appointed by their mother Subernamiye Debia, on her proceeding on a pilgrimage to Jugernath, and subsequently to Tazchunder Dut and others, holders of a tenure of second degree in the said putnee talook (Rambati being also included therein) advertised for sale for arrears of revenue under Regulation VIII. of 1819, due by the said Ramchunder Mokerjea in the capacity of guardian to the said infants. These parties stayed the sale by the deposit of the balance under Section XIII. of that enactment on a mortgage of the tenure, and thus became its proprietors. The action is to recover the extra or surplus payment to the guardian and through him the minors.

The defendant, Nubgopal Bhuttacharj, denies the guardianship of Ramchunder and the payment of the revenue by the plaintiff.

The other defendants, co-sharers with Nubgopal, follow in his wake, advancing the same pleas, and ascribing payment of the alleged balance to Madhubchunder, their elder brother.

The reputed guardian Ramchunder Mokerjea sides with the plaintiff, and admits payment of all dues on his part, alleging that owing to indisposition he employed Madhubchunder to deposit the rent in the collectorate, and hence his appearing as the agent in the matter, of which the defendants have taken advantage.

The mortgagees of the superior tenure, Tazchunder Dut and others, subscribe to the truth of the allegations made by the plaintiff.

The sudder ameen rules that the guardianship of Ramchunder is not proved; but as that individual admits the receipt from plaintiff of certain moneys, he decrees the amount against him personally, releasing the minors from the operation of the suit.

The plaintiff appeals against the award, and contends that the minors are unfairly excluded from liability, the guardianship of Ramchunder being fully established.

This appeal was admitted on the 16th of July, 1850, and the case referred to arbitration, but as it failed to meet with an award under



that process of adjudication, it was called on this day in the presence of both parties.

The pleader for the appellant took as a preliminary objection to the progress of the appeal that the provisions of Section 10, Regulation XXVI. of 1814 had not been complied with by the court of first instance, and contended that the omission vitiates the legality and correctness of the decision.

I admit the validity of the objection, and discovering it to be well founded, remand the case for a fresh decision, directing the sudder ameen to draw up a proceeding after the close of the pleadings, specifically laying down the points to be established by the respective litigant parties and re-trying the case.

With reference to those issues I do this without regard to the merits of the enquiry, under sanction of Circular Order, No. 33, of 13th September 1843.

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THE 31ST MARCH 1851.

Case No. 303 of 1849.

*Appeal from the decision of Mahomed Saem, Sudder Ameen of East Burdwan, dated 25th June 1849.*

Shibupurshad Dut, (Defendant,) Appellant,

*versus*

Nuhgopal Bhuttacharj and others, (Plaintiffs,) Respondents.

BALANCE of rent, action laid at rupees 296-4-5.

This was the claim for the revenue of the under-tenure of Ram-bati for the first six months of 1248, alleged to have been paid to the guardian on account of the minors, as set forth in the foregoing case; the plaintiffs repudiating the receipt of the money and the guardianship of Ramchunder Mokerjea, and the defendant maintaining its payment to him in that capacity.

The particulars of the case need not be further detailed, as they are above set forth, and sufficiently explicit for the purposes of this judgment.

The sudder ameen decrees for the plaintiffs, and, rejecting the guardianship of Ramchunder, declares the defendant liable for the balance, ruling that he has his remedy at law against Ramchunder for its unlawful appropriation.

The defendant appeals against the decision, and contends that Ramchunder's liability as guardian has been established.

The counsel for the appellant urges the same ground in bar of appeal, as he does in the preceding case, and I admit the validity of the objection for the reasons above stated, remanding the case for re-trial on the issues drawn *de novo*.

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## ZILLAH WEST BURDWAN.

PRESENT: C. GARSTIN, Esq., JUDGE.

THE 7TH MARCH 1851.

No. 2 of 1851.

*Appeal from a decision of Moulvee Ubdool Uzeez, Sudder Ameen of West Burdwan, dated 13th December 1850.*

Punchanund Mookerjea, (Defendant,) Appellant,

*versus*

Doorgapershaud Patuck, (Plaintiff,) Respondent.

RUPEES 506-13-2, balance of rent, with interest, &c.

This suit is brought by plaintiff as ijaradar of lot Jumtarrah to recover a certain balance of rent due to him by defendant, a putneedar of a certain lot called Ruggoonathnugur within his *ijara*, of which the yearly rent is 601-4-10. He states that he has already obtained a decree against defendant for the balances due for 1255, and has attached his property for them; and that though he has often asked defendant for the rent of 1256 still up to 27th Poos he has paid but 100 rupees, leaving up to that date a balance which, with interest, &c., amounts to the sum now claimed, rupees 506-13-2.

The defendant, in reply, admits holding the lands, &c., but states that he has paid much more than plaintiff allows; that on the 25th Bhadoon 1256, he paid by Jyehurree Attah 201 rupees, on the 17th Aughun by Soobul Bowree 150, and on the 27th Poos, by Uddit Biswas 100, in all 451 rupees; that he has dakhilas, and can prove the payments of the above sums, &c.

Plaintiff replies as before that he has received but 100 rupees, and that the other payments were never made.

On the 13th December the sudder ameen decides the case. He remarks that the only question is the truth of the payments made by the defendant, and of the validity of the dakhilas (receipts) filed in support of them. He enters at much length into the subject, and remarks certain discrepancies in the evidence of the witnesses for the defence, and the difference observable between the two dakhilas, not admitted by the plaintiff (those for 201 and 150 rupees,) and the one (for 100) which he allows to be genuine; and finally rejecting the former, he decrees the case for the plaintiff in the amount claimed.

Defendant appeals—he questions the propriety of the sudder ameen's orders *in toto*, explains away the discrepancies alluded to by that officer, and declares that the dakhilas are all alike, and all equally genuine; that plaintiff (respondent) has in no way proved that he is in arrears, and that further evidence, &c. should have been taken.

I see no cause to interfere with the orders passed in this case by the lower court, as they seem to me under all the facts just and proper. I have gone carefully into the proceedings, and quite agree with the sudder ameen in the opinion he gives as to the worthlessness both of the dakhilas and of the evidence adduced in support of them. Under these circumstances I have, of course, upheld the orders passed without calling on the other party to come forward.

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### THE 7TH MARCH 1851.

#### No. 1 of 1851.

*Appeal from the decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated 3rd December 1850.*

Dhurmdoss Shamunt and others, (Defendants,) Appellants,

*versus*

Govind Chund Ghur, (Plaintiff,) Respondent.

To obtain reversal of certain orders, passed under the provisions of Act IV. of 1840, and obtain possession of 31 beegahs of lakhiraj land in mouza Jummoa, with wasilat. Suit laid at rupees 1520.

As it appears to me after an attentive perusal of the pleas, &c., set forth in appeal, and on inspection of the proceedings held in this case in the lower court, that the judge has neglected to proceed in it in the manner indicated in Clause 3, Section 10, Regulation XXVI. of 1814, and record the various issues to be established—his decision is incomplete, and, of course, must be remanded; whilst at the same time it is needless under the precedent given in case No. 129 of 1850, Sudder Dewanny Reports, to enter at this stage of the proceedings more fully into the details of the case.

Under the above circumstances, and as I have no alternative, I decree the appeal, and, reversing the principal sudder ameen's orders, remand the case for re-trial and for a fresh decision on the merits. The usual orders for return of stamp.

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THE 7TH MARCH 1851.

No. 2 of 1851.

*Appeal from a decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of Bancoorah, dated 3rd December 1850.*

Dhurmdoss Shamunt and others, (Plaintiffs,) Appellants,

*versus*

Govind Chund Ghur and heirs of Ramakanth Ghosal and others,  
(Defendants,) Respondents.

To reverse a sale held in execution of a decree, and declare the lands then sold to be mal rupees 1545.

This is a suit between the same parties as in the last, and is in fact a counter-claim brought by the defendants in that case, to reverse the sale of certain lands under which the plaintiff sues in it. As both cases must stand or fall together, it has, of course, been remanded with the other for re-trial. The stamp fee to be returned.

THE 12TH MARCH 1851.

No. 205 of 1850.

*Appeal from a decision of Baboo Mohunloll Pandeh, Moonsiff of Burjorah, dated 24th September 1850.*

Mohadebdoss Bunnick, Claimant, Appellant,

*versus*

Ramlochun Rajgooroo and others, Plaintiffs,

*versus*

Becharam Rajgooroo and Doorgachurn, Defendants.

RUPEES 143-6-6, due on ikrarnamah.

The particulars of this case will be found detailed at full length in the published reports of cases decided in this zillah, under date 8th August 1850, No. 35.

It is of course needless to repeat them again in this place, and I have only to remark that the case was remanded on the above date to the moonsiff with instructions to enquire more fully into the matter, and to give the appellant (claimant) a "further opportunity of proving his claim." Instead of this, however, the moonsiff has contented himself by taking the evidence of two more witnesses for the plaintiff, and then again decreeing the case in his favor on the same grounds as before.

The claimant again appeals. He states that the lands are his, and have been sold outright to him, that he is in possession, and that plaintiffs have adduced no proof of the validity of their demand; that the suit is collusively brought by the other parties, solely to

oust him, and that the present order, if unaltered, will enable them to do this without difficulty, &c.

The appeal having been allowed on the 26th December 1850, the plaintiffs (respondents) reply, and state that they have proved their case by the evidence of five witnesses; that appellant's claim is unfounded; and that he never had possession; and that the mere fact of their having no khatas, &c., does not disprove that of their having lent the money, &c.

I observe that this case was remanded by the officiating judge on the 8th August 1850, with specific instructions to make certain enquiries in it both in support of the plaint and of the statements made in opposition to it by the claimant, (appellant.) I observe further that the moonsiff, whilst he has taken the evidence of two more witnesses for the plaintiff, has altogether refused to do so for the claimant, who, consequently, is still in the position he was when the suit was last remanded, whilst nothing further has been done to elucidate and clear up the plea of collusion so strongly urged by him.

I consider the moonsiff's proceedings in this case as highly irregular, and under these circumstances have deemed it my duty in a separate proceeding (though he is no longer in this district) to call upon him to explain them. As for the case itself there is nothing for it but a remand, for which reason I have decreed the appeal, and, reversing the moonsiff's orders, have returned the proceedings with a view to full and complete enquiry, after which a fresh order will be passed upon the merits. The usual order given for the return of stamp.

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THE 13TH MARCH 1851.

No. 4 of 1851.

*Appeal from the decision of Kazeo Hamid Ally, Moonsiff of Soonamookhy, dated 20th December 1850.*

Gungaram Mundle, (Defendant,) Appellant,

*versus*

Gholam Chund Aush, (Plaintiff,) Respondent.

RUPEES 213-5-6 debt.

This suit is brought by plaintiff to recover with interest, &c., the sum of Sicca rupees 100, lent to defendant, Gungaram and four other persons, gomashas on the part of Raj Chunder Mitter and Sumbhoo Chunder Sircar, maliks of lot Rooppaul, for the payment of certain arrears of revenue due on the above lot for the first six months of 1244. He states that the money was advanced and the bond duly signed by the above parties on the 15th Aughun of that year, and that, as no part of it has been paid, he now sues for it, laying his claim as above stated.

Gungaram Mundle, defendant (appellant,) alone comes forward to defend the suit, and denies plaintiff's claim *in toto*, and declares that he never had occasion to borrow this money, and that the suit has been instituted solely from motives of enmity on the part of Jebnath and Lallmohun Ghose.

Plaintiff replies as before, adding that the defendant (Gungaram) is greatly involved in debt, and that he offered to compromise the suit, &c.

On the 20th December 1850, the moonsiff decrees the case against Gungaram and the other parties, (or their heirs) named in the bond, and the former alone appeals; but it is needless in the present state of the case to enter more fully into these points, as the moonsiff has neglected to proceed in it in the manner required under Clause, 3, Section 10, Regulation XXVI. of 1814, and point out and define the issues to be tried. Under these circumstances, and with reference to the Court's Circular Order, 8th May 1850, there is nothing for it but to remand the case, and I therefore decree the appeal, and, reversing the moonsiff's orders, return the proceedings for revision; after which a fresh order will be passed upon the merits. The usual order for the return of stamp.

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THE 13TH MARCH 1851.

No. 5 of 1851.

*Appeal from a decision of Kazei Hamid Ally, Moonsiff of Sonamookhy, dated 20th December 1850.*

Nuffer Chund Mangec, (Plaintiff,) Appellant,

*versus*

Cheeroo Mirdha and Gudyc Mirdha, (Defendants,) Respondents.

RUPEES 61-8, due on a kurarnamah.

The particulars of this case will be found in page 272 of the published decisions of this district for August 1850.

It will be seen that the case was then remanded by the officiating judge with instructions to the moonsiff to enter more fully into it, and examine carefully the khatas and accounts upon which the ikrarnamah was said to have been given.

This has accordingly been done, and the moonsiff, after taking the evidence of three new witnesses and examining a khata buhee filed by the plaintiff, has come to the conclusion that both are untrustworthy, and that the claim is utterly unfounded and false. Under these circumstances, of course, he dismisses the case.

Plaintiff now appeals. He states that he has been unjustly dealt with, and has fully proved his case; that the witnesses now examined say nothing contradictory of what was stated before the remand, and that there is nothing in the former proceeding to show that they (the new witnesses) were not present when the ikrar was

written; that his khata is good and valid, and that he tried to have the writer of it examined, but failed in doing so, for which he is not to blame; that in the past year his house was entered by thieves and all his papers, &c. strewn about and dispersed; but that he has since found the hisab upon which the ikrar was given.

After carefully going through all the proceeding held in this case, I must say that I quite agree with the moonsiff in the view he now takes of it. The evidence of the new witnesses examined I think worthless, whilst the khata itself is suspicious, besides which it contains but two items in the name of defendants, amounting to rupees 27, and this does not tally with the demand now made or show how it amounted to rupees 37-8, and though the appellant now states that he has since found the hisab, this seems but a poor excuse, as he knew well that the case was remanded solely that he should prove his accounts, &c., in the moonsiff's court, and he should either have filed it there, or have mentioned its being mislaid which he did not do.

Under all the facts of the case, and as I see no cause to interfere with the orders of the lower court, I have confirmed them without calling upon respondents to appear.

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THE 14TH MARCH 1851.

No. 10 of 1851.

*Appeal from a decision of Moulvee Noorul Hossein, Moonsiff of Kishenpore, dated 17th December 1850.*

Gungaram Thetea, (Plaintiff,) Appellant,  
*versus*

Ramchand Ghuttuck and others, (Defendants,) Respondents.

RUPEES 121-5-4. to recover value of crops illegally attached.

The full details of this case will be found at pages 31 and 32 of the published decisions of this zillah for February, and again at pages 362 to 365 of the same for September 1850.

A reference to the above decisions will show that this suit has already been twice remanded, and it is sufficient to state here that on the last occasion it was returned to the moonsiff, to clear up and settle certain points as to the "liability of one of the defendants (Ramchand Ghuttuck) and the precise description of the lands claimed by the plaintiff, and further to ascertain whether the attachment made under Section 13, Regulation V. of 1812 by plaintiffs was legal or not."

These points it appears that the moonsiff has neglected, for I observe that he received back the proceedings only on the 7th December, and, (without making any further enquiry whatever) on the 17th idem, decided the case, remarking that "as plaintiff had given no limits, the boundaries of the lands he claims cannot be ascertained, whilst the survey shows that there is not the quantity

he (plaintiff) sues for, and that until the limits of the two different talooks are defined and settled, nothing further can be done in the matter," and he ends by passing an order (the words are "mokuduma nonsuit—dismiss") both nonsuiting and dismissing the case.

Plaintiff appeals and states that the above order is unjust, and that by the word "dismiss" being used, his right to bring a new suit is completely cut off; that in a suit for damage to crops it is not needful to give the limits of the land; that the moonsiff did not mention this when fixing the issues to be tried; and that the lands belong to talook Rooesur, &c.

The order passed by the moonsiff in this case cannot for one moment be upheld, as it is contradictory in itself and both nonsuits and dismisses the case at the same time. If only for this reason, therefore, the case must be remanded, but independent of this I must say that it is quite incomprehensible to me, and that I do not understand from it how the moonsiff now comes to the conclusion he has.

On the whole I consider the moonsiff's proceedings in this case as highly unsatisfactory, and, under these circumstances, decree the appeal, and, reversing his orders, remand them for correction as regards the contradiction in his decree, and also for further enquiry as to the points stated in the officiating judge's proceedings of the 25th September last. Stamp to be returned.

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### THE 22ND MARCH 1851.

No. 18 of 1851.

*Appeal from a decision of Moulvee Mazoom Hossein, Moonsiff of Madhubgunge, dated 19th December 1850.*

Guggernath Doss Mohunt, (Defendant,) Appellant,

*versus*

Anundram Dey, (Plaintiff,) Respondent.

Madhubdoss, Oozurdar.

RUPEES 149-6-0, debt.

The particulars of this case will be found in page 191 of the published decisions of this zillah of the 8th July 1850.

On the above date the officiating judge remanded the case to the moonsiff, with instructions to make further enquiries as to the heirs of Nundloll Doss Mohunt, and also to state his reasons for holding the defendant (present appellant) liable for his costs.

On the 19th December last the moonsiff again decides the case. He remarks that it is fully proved by the evidence of the plaintiff's witnesses that the defendant, Juggernath, is the heir, and has both taken possession of certain property belonging to the deceased, and also performed his *sradh*: still as defendant denies this, and the third party claims as heir, and Juggernath too says that he is so,



and it is *not very clear* how this may be, and at any rate does not affect the claim; he decrees the case against the property of the deceased, holding both the defendant and the third party liable for their own costs.

Juggernath again appeals, objecting that the moonsiff has not allowed him his costs: that he is not the heir and has received no part of the property, and that the decree does not even state what he has received; and that as the decree as it now stands will injure him when carried into execution, he now seeks to have all this settled and decided at once.

The moonsiff's order in this case cannot possibly be upheld, as it is both inconsistent in itself, and any thing but clear and explicit. He first of all states that the defendant, appellant, is clearly shown to be the heir, and has received the property; and then goes on to say (as far as I can understand him) that the third party *may be* the heir. He then decrees the case against the property of the deceased, and holds both the appellant and the oozurdar liable for their own costs, without giving (as he was told to do) any reason for it.

Now, it is quite certain that until all this is cleared up, and a plain and clear decision is given in the case, it is quite impossible for me to dispose of the appeal, and as this can only be done by a remand, I am obliged once more to return the proceedings for revision. The appeal is, therefore, decreed, and the case again remanded with reference to the above remarks.

The usual order passed for the return of stamp.

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THE 22ND MARCH 1851.

No. 14 of 1851.

*Appeal from a decision of Moulvee Adeelooddeen Mahomed, Moonsiff of Burjorah, dated 26th December 1850.*

Golabdec Mundle, Wullec Mundle, Omur Mundle and Abdool

Mundle, (Defendants,) Appellants,

*versus*

Saduk Mundle, (Plaintiff,) Respondent.

RUPEES 287-10, value of rice.

This case was remanded for re-trial by the officiating judge of this district in his proceeding under date the 7th August last, and all its details, &c., will be found in the published decisions of this zillah for that date.

This suit was brought to recover the value of a quantity of rice given to the defendants and two other persons, (Kooshal Sheik and Ruheem) who do not, however, now appeal. The plaint stated that the above defendants having taken the rice, had, on the 13th Bysakh, given their joint bond for the same.

In reply the defendants generally denied the execution of the bond, and, though they admitted having had dealings with the plaintiff, they stated that these had all been settled and adjusted, and that their bonds, &c. had been returned to them. Two of them also (Abdool and Wullee) denied that their signatures were on the bond at all.

On the 31st December 1849, the moonsiff, for the reasons stated in his proceedings, dismissed the case, but on appeal by the plaintiff it was remanded with instructions, that the moonsiff should state at length his reasons for discrediting the evidence of the plaintiff's witnesses: and also to make some further enquiry as to the signature of Wullee Mundle, after which a new decision was to be made upon the merits.

On the 26th December last, the case was a second time decided by the then moonsiff, and this officer, after going through the proceedings, decreed the case for the plaintiff, holding each and all of the defendants liable for the amount sued.

The four defendants abovenamed now appeal and urge, first of all, that the moonsiff has neglected to proceed in the case in conformity with the provisions of Regulation XXVI. of 1814: they urge also several other pleas against the decision, but it is needless to repeat them here, for, if the first is valid, it necessitates a remand.

From a perusal of the proceedings held in this case, it appears to me that the appellant's objection is valid and good, and that the moonsiff has neglected to proceed in it in the manner indicated in Section 10 of the above Regulation; and, of course, under these circumstances I have no power to proceed further in the case until this error be rectified. I, therefore, decree the appeal, and, reversing the moonsiff's orders, remand the case for revision. The usual order for the return of stamp.

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THE 27TH MARCH 1851.

Case No. 20 of 1851.

*Appeal from the decision of Moulvee Asudoollah, Moonsiff of Rudhanagore, dated 27th December 1850.*

Gooroochurn Paul, (Defendant,) Appellant,

*versus*

Gopaulehunder Mundle, (Plaintiff,) Respondent.

RUPREES 44, 5 annas, 18 gundahs, enhancement of rent.

The details of this case will be found in the published decisions of this court for March 1850, page 66.

This suit was remanded to the moonsiff by the officiating judge of this zillah on the above date for the reasons stated in his proceeding; and this officer, after making some further enquiry in it

and deputing an ameen to measure the lands, &c., on the 23rd December, again decrees it for the plaintiff. He considers it clearly proved that the plaintiff is the talookdar, and has a right to enhance the defendant's rent, and also that he has acted in strict conformity to the Regulations in doing so, and duly issued the ishtehars, &c., required. He sets aside the pleas urged for the defence as invalid and bad, and with reference to the survey made by the ameen holds that the defendant is clearly shown to hold 10 beegahs, 17 cottahs, 5 gundahs of land, (including 2 beegahs, 14 cottahs, 18 gundahs formerly exempted as lakhiraj; but for which no claim has been made since the remand) and at certain rates fixed by him, he assesses them at a jumma of rupees 40-6-18 from 1253.

Defendant again appeals. He denies plaintiff's right as talookdar to assess, and says that the proper ishtehars were not issued; that he has fairly proved his sunnud and dakhilas, showing that he has never paid more than 19 rupees, 8 annas for very many years, and that he cannot be made to do so now; that all his witnesses have not been examined; that the present measurement includes some land belonging to other villages, and that the moonsiff has now included in his decree some land, (the above 2-14-18 belonging to Munneemohun Gosain) which he had formerly excluded, and to which the plaintiff made no objection, and that the rates, &c. are too high.

After carefully going through the proceedings held in this case, I must say I quite agree with the moonsiff that the lands are liable to an enhanced rent. The sunnud itself says nothing of the rents being fixed at rupees 19-8 for any particular time, and defendant's (appellant's) objection of plaintiff's not being the talookdar will not hold good, as his own dakhilas show that he paid rent to him as such. I hold also that the prescribed ishtehars were duly issued, and on all these points, therefore, I agree with the moonsiff, and the only question is what quantity of land does he now hold liable to assessment.

The last survey made gives a result of 6 beegahs, 11 cottahs,  $9\frac{1}{2}$  gundahs, admitted to be held by defendant (appellant), and of 4 beegahs, 5 cottahs,  $15\frac{1}{2}$  gundahs, of which the holding is disputed; and it is this latter portion only which now requires consideration. Of this, 2 beegahs, 14 cottahs, 18 gundahs are said to belong to Munneemohun Gosain, and as this was formerly exempted by the moonsiff without opposition on the part of the talookdar (respondent) I do not see that it can now be fairly included again. Deducting this therefore from the 4 beegahs, 5 cottahs,  $15\frac{1}{2}$  gundahs, there remains but 1 beegah, 10 cottahs, 17 gundahs to be accounted for. The respondent, however, himself withdraws his claim in this case to 1 beegah, 7 cottahs,  $3\frac{1}{2}$  gundahs of this, and it leaves therefore but 3 cottahs,  $1\frac{1}{2}$  gundahs, which is clearly shown to be in

the hands of the appellant, though he can give no satisfactory account of it.

These 3 cottahs,  $13\frac{1}{2}$  gundahs, therefore, I consider is fairly liable to rent with the 6 beegahs, 11 cottahs,  $9\frac{1}{2}$  gundahs, which is not disputed, and which together show that he, appellant, holds 6 beegahs, 15 cottahs, 3 gundahs: and upon this, at Mr. Keating's rates, the fair jumma appears to be 26 rupees, 6 annas, 1 pic. I therefore fix this as the rent, and, decreeing the appeal, modify the moonsiff's orders to this extent, giving appellant costs in proportion to the amount now fixed.

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THE 28TH MARCH 1851.

No. 24 of 1851.

*Appeal from the decision of Moulvee Asudoollah, Moonsiff of Radhanagore, dated 31st December 1850.*

Gooroochurn and Kisto Paul, (Defendants,) Appellants,

*versus*

Bilassy Bewah and others, (Plaintiffs,) Respondents.

VALUE of crops carried off, rupees 27.

This suit was remanded by the officiating judge of this district on the 30th January 1850, with instructions to the moonsiff to depute some person to make local enquiry into the facts in dispute, and then to decide it *de novo*; but his proceedings in it will be found at page 14 of the published decisions for this zillah for the above date, and it is needless to repeat them.

These instructions having been carried out, and the ameen's report received and considered; the moonsiff upholds his former order and again decrees the case in favor of plaintiffs.

Defendants again appeal. They state that the ameen has reported wrongfully in the matter: that a watercourse divides the villages of Bhagaarah and Gopeebullubpore, and that the lands in dispute belong to the latter; and that in short none of the Bhagaarah lands are on the east of the nullah; that they have fully proved their case, and that the claim is quite unfounded, &c.

After going through all the proceedings held in this case, I must say I consider the moonsiff's order just and proper. The plaintiffs (respondents) have filed a decision, No. 21, passed in khas appeal, showing that the Bhagaarah lands *do* extend across the water, and it appears to me, from the whole of the enquiries made, that they (respondents) have fully established their case. Under these circumstances, and as I see no cause to interfere with the orders passed in the lower court, I have confirmed them without calling upon the respondents to appear.

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THE 31ST MARCH 1851.

Case No. 25 of 1851.

*Appeal from the decision of Moulvee Ubdool Uzeez, Moonsiff of Bancoorah, dated 28th December 1850.*

Haradhun Kewat, (Defendant,) Appellant,

*versus*

Sartuck Dey and others, (Plaintiffs,) Respondents.

RUPERS 3, annas 2, price of fish.

This suit is brought by the plaintiffs as partners in a certain tank, situated near the town of Bancoorah, against defendants, (some as partners and some as fishermen employed by them,) to recover the price of 2 maunds of large and half a maund of small fish, surreptitiously taken by them out of the said tank on the night of 10th Bhadoon 1256.

Defendants, in reply, state, first, that several persons having shares in the tank have not been made parties in the case, whilst others who are said to be partners have no interest in it; that defendant, Haradhun Kewat, has a pottah from the malicks, giving him 9 annas share of all the large and the whole of the small fish in it, and that under this pottah the fish were honestly and fairly taken out on the date stated.

Both parties reply and rejoin at much length, and on the 20th December the moonsiff expresses his intention of proceeding to the spot on the 23rd idem, and then and there enquiring into the case.

On this date, however, all the parties apply to have the case referred to arbitration, and this being agreed to by the moonsiff, the proceedings were made over to the persons named, with instructions to settle it and give in their verdict in three days' time.

This they accordingly do, and in their finding they first of all arrange for the disposal of the proceeds, &c., of the tank, and appoint certain persons to look after it; and then they go on to state that though they do not consider that Haradhun has established the validity of his pottah, still as it is clear that he is an old tenant, they decided that he shall for the future enjoy a  $8\frac{1}{2}$  annas' share of all the fish (the rest to go for the purposes above mentioned in their verdict) and pay 1 rupee fine for the fish taken on the date stated.

On the very day this finding was put in, the defendant (appellant), Haradhun, gave in a durkhast to the moonsiff, objecting to the verdict, and stating that some of the arbitrators were inimical to him; but this being overruled by the moonsiff, that officer, on the 28th December, upholds the finding of the arbitrators, and decrees the case in conformity to it.

Haradhun defendant alone appeals and at some length questions the finding as unjust. He states that some of the arbitrators have

had cases against him, and that they should not have been appointed arbitrators; that some of them are inimical to him, and some connected with the courts: in short that they have sided with his opponents and that the verdict is unfair.

The only question in this case is, was the suit properly and fairly submitted to arbitration, and is the finding just? or is there reason to think that the arbitrators have been biassed or influenced to give an unjust decision? It is quite certain that the defendant (the only appellant) agreed to refer the matter to arbitration, and though on the day the finding was given in, he objected to it, and said that some of the arbitrators were hostile to him; still I do not see that he has in any way established this, and had there been any bad feeling or enmity on the part of the arbitrators, it must have existed long before he (appellant,) agreed to abide by their verdict, and it will not do now to say that they have given an unfair decision, solely because the finding is not quite what he could wish. Under these circumstances, and as I see no reason to interfere with the verdict or with the moonsiff's orders upholding it, I have confirmed them without calling on the respondent to appear.

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## ZILLAH CHITTAGONG.

PRESENT: A. SCONCE, Esq., OFFICIATING JUDGE.

THE 6TH MARCH 1851.

No. 407 of 1850.

*Appeal from the decree of Moulvee Ferhatoollah, Moonsiff of Bhojpore,  
dated 30th July 1850.*

Nacemoodeen, (Plaintiff,) Appellant,

*versus*

Jaysona and Beepola, (Defendants,) Respondents.

THIS suit must be remanded. Plaintiff stated that from Doulut Shah, on account of a talook held by him, under the khass turuf Mirtunjye Canooogoe, he had in 1204, bought 1 kance; and as this land assumed to be 1-5-1 k. had been measured under dag 1183, in the name of Beepola, daughter-in-law of Doulut, and she had entered into a settlement with Government for the same together with other land, he sought to have his own possession affirmed with respect to the chittas; to have the land withdrawn from Beepola's settlement and to have a settlement taken from himself.

On the 20th July the defendants failing to appear, the moonsiff held a proceeding ostensibly under Section 10, Regulation XXVI. of 1814, and directed the plaintiff to be prepared with proof on the topics indicated: but ten days later, taking up the case again, he finds the suit wholly untenable, and without having received any proof from the plaintiff, he dismisses the case.

The moonsiff, it is hard to say, by what data his judgment was governed. He alludes to an answer filed by Jaysona, wife of Doulut, on the very day of his decision, in which she asserts that the measurement and settlement of which plaintiff complains took effect before the purchase of the plaintiff: and he concludes that the action of the plaintiff is altogether untenable. He passes this order though Beepola, the party concerned, made no answer: and he overlooked the necessity of investigating the plea which the plaintiff, in fact, raised whether or no Doulut Shah was the virtual owner and possessor of the land sued for, whether or no Doulut sold it to the plaintiff, and whether, as the rightful owner and occupant of the land, plaintiff was entitled to a settlement of it in



substitution of the settlement then held by Beepola. It is not clear how the plaintiff can seek to have the disputed land withdrawn from the other land which composes the settlement of Beepola, for the revenue authorities only can effect butwarras; but if the land sued for be his, he is not the less entitled to have his rights in the talook, as it now stands declared.

For the rest, I remark that the proceeding held on the 20th July in conformity with Section 10, Regulation XXVI. of 1814, is not written by the moonsiff as required by Section 2, Act XV. of 1850, and of itself renders the decree illegal.

The suit is, therefore, remanded, the moonsiff will record a legal proceeding under Act XV. of 1850, and proceed to try the case as usual upon its merits.

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THE 6TH MARCH 1851.

No. 435 of 1850.

*Appeal from the decree of Moulvee Anwur Alee, Moonsiff of Sundeeep, dated 19th August 1850.*

Assab Banoo, (Plaintiff,) Appellant,

*versus*

Mahomed Jumeer Bhooya, (Defendant,) Respondent.

IN this action plaintiff sought to recover her hereditary share of 3 k., 8 g. of land, which she alleged her brother Mahomed Mookceen and a relation, Shookoor Mahomed, had mortgaged some time in the month of Maugh 1244, to the defendant, she was willing to repay her share of the principal, with interest, she said, but Mahomed Jumeer Bhooya would not resign the land.

I must agree with the moonsiff that the plaintiff has failed to prove her plea. The defendant, it is true, has on his part given no evidence; but the witnesses of the plaintiff prove just as much that the transaction was a sale, as that it was a mortgage. Plaintiff admits that from her father's death, Mahomed Mookceen was in occupation of the land; she does not plead that in alienating the land, he exceeded his powers. She confines herself to the reclamation of the mortgage, and this she has failed to justify. One witness, Mahomed Wulce, says that the deed took the form of a regular sale; but that Mahomed Jumeer promised to give back the land, if the money were repaid him. A second witness, Oomeed Alee, knows only of the sale, as a sale: if any thing was said of a mortgage, he, though a witness to the transaction, heard nothing of it. The third witness was not present when the transfer was made of the land, and he speaks only by hearsay.

On her appeal, plaintiff says she has more witnesses to be examined, but it is obvious she neglected the opportunity of adducing

them. By the moonsiff's order of 4th May she was fully warned on this point. I affirm the moonsiff's order.

THE 8TH MARCH 1851.

No. 440 of 1850.

*Appeal from the decree of Moulvee Ferhatoollah, Moonsiff of Bhojpore, dated 26th August 1850.*

Sunaoollah, (Plaintiff,) Appellant,

*versus*

Akbar Alee and Ameer Beebee, (Defendants,) Respondents.

HERE is a case in which the plaintiff sues to quash a settlement of 1 k. 16-2 resumed land, which Akbar Alee and Asgur Alee made with Government. He declared that he himself was the proprietor of this land; that Akbar Alee was his ryot; that, in fact, Akbar Alee's father, Becha Gazee, so far back as 1188, had given a kubooleut for the land; and that ever since father and son had paid him rent.

To account for the lakhiraj being designated Zimna Sadik Mahomed in the recent measurement, he explained that in the measurement of 1126, Sadik Mahomed was a slave of his ancestors, and that it was not uncommon for them to have land measured in the names of their dependents. With a turn of thought with which I am quite unable to sympathize, the moonsiff seizes upon this circumstance to dismiss the suit. He says the plaintiff's claim is contrary to Act V. of 1843. It is illegal, he says, to found a claim of this sort on the circumstance of Sadik Mahomed being a slave. But clearly the merits of the claim have nothing to do with the question of slavery. Plaintiff says the land is his property, and that he, the proprietor, not the tenant, is entitled to hold the settlement thereof. This question of property must be investigated and adjudicated by the lower court, and the suit is accordingly remanded, the value of the appeal stamp will be refunded.

THE 8TH MARCH 1851.

No. 441 of 1850.

*Appeal from the decree of Moulvee Ferhatoollah, Moonsiff of Bhojpore, dated 26th August 1850.*

Sunaoollah, (Defendant,) Appellant,

*versus*

Akbar Alee, (Plaintiff,) Respondent.

THIS suit is between the same parties as No. 440, just disposed of. In this case Akbar Alee sued to recover rupees 8, (and da-

mages), which the defendant, Sunaoollah, had constrained him to pay as rent for 1209, though, as he alleged, he held no land under Sunaoollah, and owed him no rent. Appellant's plea was that from 1188 downwards. Becha Ghazee and his son, Akbar Alee, held under him 3 krants, 10 gundahs of land, and regularly paid him rent at the rate of Sicca rupees 10-8 per annum for the same down to 1208, and he showed that Akbar Alee's suit to quash the distraint, which he had effected for the arrears of 1206, had been disallowed.

As in the appeal now remanded I have some difficulty in following the moonsiff in his decree in this case. He declares the defendant Sunaoollah's statement that the issue of the suit respecting the distraint of 1206, invalidated the present action to be a misrepresentation and indeed to be indictable; and, seeing that he had dismissed the claim of Sunaoollah in the second suit, he affirmed the justness of the demand made by Akbar Alee to recover the 8 rupees paid by him.

The moonsiff has failed altogether to distinguish the issue before him: the question is whether Sunaoollah was during 1209 in possession of the 3 k. 10 g. mentioned by him, and whether under him, as tenant for 1209, Akbar Alee held that land and owed him rent.

Besides, it is to be observed, that Sunaoollah admits that, on the 22nd January 1848, Akbar Alee entered into an independent settlement with Government for 1 k. 16-2 out of 3 k. 10 g. It must, therefore, be further considered whether this settlement for 1847-48, that is, for 1209, did not virtually affirm the possession of Akbar Alee, and oust Sunaoollah from the land conveyed in it; and in that case, if the title of Sunaoollah to recover arrears on account of the 1-16-2 be untenable, he may nevertheless be entitled to rent for 1209, on account of the 1 k. 13-2 remaining, out of the 3 k. 10 g., which formed the original engagement between the parties.

The suit is accordingly remanded for re-trial. The value of the stamp of the appeal will be refunded.

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THE 8TH MARCH 1851.

No. 442 of 1850.

*Appeal from the decree of Moulvee Ferhatoollah, Moonsiff of Bhojpore, dated 19th August 1850.*

Musst. Bhaggotee, (Defendant,) Appellant,

*versus*

Madhubnath, (Plaintiff,) Respondent.

PLAINTIFF, respondent, here sues to recover rupees 15, which, he says, he advanced to Musst. Bhaggotee on her leasing to him

1 kanee of land for five years from 1207 to 1211: and he justifies his claim on the plea that Bhaggotee dispossessed him by force in Assar 1207, and never afterwards transferred to him the land.

Bhaggotee's answer was that the plaintiff for the 1 kanee, in question, undertook to advance her rupees 7-8; but that he actually gave her nothing; and that he got inserted in the written lease, which he kept, the sum of rupees 15.

In trying the case the moonsiff has shown himself unconscious of what ordinary fairness, as well as the common practice of our courts, requires. Though the plaintiff averred that he had paid the defendant in cash rupees 15, and she denied that statement. The moonsiff requires the defendant alone to produce evidence of her plea; that is, to prove a negative: and decrees the suit against her, merely because she admits that a lease between them had been talked of, clearly the payment or no payment of the sum sued for was at issue. Defendant said, she did not receive any money from the plaintiffs, and yet plaintiff gets a decree without proving that he had paid Bhaggotee the 15 rupees.

It is perhaps still more remarkable that the plaintiff did not even file the written lease, which he professes to have received. I remand the suit for full investigation. The value of the stamp of the appeal will be refunded.

THE 8TH MARCH 1851.

No. 446 of 1850.

*Appeal from the decree of Moulvee Ferhatollah, Moonsiff of Bhojpore, dated 26th August 1850.*

Beecha Ghazee, (Defendant,) Appellant,

*versus*

Mahomed Sumee, (Plaintiff,) Respondent.

I HAVE this day taken up several appeals preferred from the decision of Moulvee Ferhatollah, moonsiff of Bhojpore, (now under suspension) and from the defect of judgment and the irregularities displayed, I have remanded these cases for further investigation. This case must also be remitted.

Plaintiff alleged that he had hired a boat of his own to Mahomed Hossein and others, his neighbours, and that Beecha Ghazee had distrained this boat as the property of one Mahomed Kamil, and sold it through the distraint commissioner for an arrear of rent due by Mahomed Kamil to himself, (Beecha Ghazee,) and he instituted this suit to recover from Beecha Ghazee rupees 30, being twice the price which the sale of the boat realized.

Beecha Ghazee, in answer, maintained that the boat belonged to Mahomed Kamil, and that Mahomed Kamil had not hired it from

the plaintiff, and he declared that he was quite prepared to prove these facts; but the moonsiff declines to give him an opportunity of proving his pleas. Taking up the case for the first time (as is written in the decree) the moonsiff, finding that Mahomed Kamil, in his answer, admitted the boat belonged to the plaintiff, takes this and this only as evidence in proof of the merits of the claim made. Observe that Beecha Ghazee urged that Mahomed Kamil, in collusion with the plaintiff, had brought forward this suit: and the irregularity of the moonsiff becomes, if possible, more palpable. He not only decrees a claim in favor of a plaintiff without requiring that plaintiff to prove the grounds of his claim, but he declines to receive evidence from a defendant who undertakes to disprove those grounds.

The value of the stamp of the appeal will be refunded.

THE 8TH MARCH 1851.

No. 452 of 1850.

*Appeal from the decree of Moulvee Ferhutoollah, Moonsiff of Bhojpore, dated 6th September 1850.*

Fukeer Mahomed and others, (Plaintiffs,) Appellants,

*versus*

Magun Mundul and others, (Defendants,) Respondents.

THE plaintiffs in this action professing to be in possession of, and to own an old tank named "Kumarea," which is measured as dag 697, in the collector's measurement, sued to have their right declared to have their own names substituted for those of the defendants as the occupants of the tank in the chittahs in question; but they failing to give any proof of their claim, the suit was dismissed by the lower court, and the right of the defendants affirmed.

Undoubtedly the plaintiffs, appellants, displayed much delay. On the 3rd August the moonsiff, specifying the points at issue, desired the parties to come forward with their proofs; but eventually he disposed of the suit without giving the parties notice of the intended hearing as required by Section 12, Regulation XXVI. of 1814, and without having ascertained from the parties that they were prepared to go to trial. This flaw is fatal to the decree: as the case stands it is incomplete, and it must be remanded.

The value of the stamp of the appeal will be refunded.

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THE 11TH MARCH 1851.

No. 443 of 1850.

*Appeal from the decree of Baboo Poorno Chunder, Moonsiff of Howlah,  
dated 20th August 1850.*

Tecta Ram, (Plaintiff,) Appellant,

*versus*

Gonoseela, (Defendant,) Respondent.

THIS suit was instituted to recover possession and arrears of rent for 5 gundahs of land for the years 1206 to 1210, less 7-3, realized by distraint for 1209; and plaintiff grounded his claim on these two pleas; that the land belonged to turuf Ojudiah Ram, of which he was part proprietor, and that previous to 1206, Gonoseela agreed to pay him one rupee a year for the land, and did in fact pay it, as did her husband and his father pay rent for the land before her.

The defendant, Gonoseela, claims the land as nankar: she does not deny that it belonged to the turuf; she does not profess to be a proprietor of the turuf, or to pay revenue to Government as such, only she says that her husband's grandfather, being unable to carry on the turuf, threw up all his interest in it, except these 5 gundahs, which he reserved to himself as nankar free of rent.

The plaintiff's appeal is not written without point: he insists that the respondent, Gonoseela, must hold the land either as a proprietor of the turuf, or as a subtenant; but still he overlooks the chief reason for the moonsiff disallowing his claim. He entirely fails to prove that either Gonoseela, or those from whom she derived the land, ever paid him rent for the same: and thus the moonsiff held that without the service of the notice prescribed by Regulation V. of 1812, plaintiff was incompetent either to oust Gonoseela or to recover rent for years, which at the beginning of each year he had not in the form prescribed by law, announced it to be his intention to demand.

For the same reason I must disallow the appeal: plaintiff, appellant, had two several opportunities of producing his witnesses, and on his part five were actually examined, two before the moonsiff and three before an ameen deputed to hold a local enquiry; and not one of the five could say that to his knowledge the plaintiff ever paid rent for the land: and on the other hand it is said that the land had been held by the defendant, her husband, or his father, for 60 or 70 years.

A solahnamah had indeed at one time been filed in the name of Gonoseela; and an order was passed by the moonsiff on the 19th March, with a view to ascertain whether she had actually assented to it: eventually she denied this, but long after the paper had been filed, the plaintiff took steps to produce his witnesses;

did produce some, and was called upon to produce more: and after all had the opportunity of submitting fresh witnesses to the ameen.

I do not say then that Gonoseela is not liable to pay rent for the land held by her; but it is abundantly evident that plaintiff has shown no legal cause for the claim now made. Gonoseela holds the land on a title of ancient occupancy: she can only be ousted if she fail to pay the rent for which she is liable, and she cannot be liable for rent till the form prescribed by Regulation V. of 1812 has been adopted.

For these reasons I affirm the decree of the lower court.

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THE 11TH MARCH 1851.

No. 444 of 1850.

*Appeal from the decree of Baboo Poorno Chunder, Moonsiff of Howlah, dated 20th August 1850.*

Teeta Ram, (Defendant,) Appellant,

*versus*

Musst. Gonoseela, (Plaintiff,) Respondent.

THIS claim was made by Musst. Gonoseela, to recover the value of certain property, which, as she alleged, the appellant had irregularly distrained and sold: the moonsiff allowed her claim, and against that order this appeal is made.

In a separate decree this day pronounced, I have stated the case between Gonoseela and Teeta Ram. It is clear that he undertook to distrain her property for arrears, while it had never been determined what rent she owed him, and, had in fact, never paid him rent at all. Under such circumstances no arrears could be said to be due by Gonoseela, and the appellant was incompetent to distrain.

I affirm the moonsiff's decree.

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THE 11TH MARCH 1851.

No. 454 of 1850.

*Appeal from the decree of Moulvee Ferhatoolah, Moonsiff of Bhojpore, dated 23d August 1850.*

Kasim Alee and others, (Defendants,) Appellants,

*versus*

Petumber, (Plaintiff,) Respondent.

THE plaintiff, in this action, alleging that he held no land under the defendants and owed them no rent, sued to recover the value of certain property of his which they had distrained and sold, and a corresponding amount as damages. Defendants averred that both plaintiff and his father before him held their land and paid rent.

On the 3rd August, the moonsiff held a proceeding under Section 10, Regulation XXVI. of 1814, and called upon the defendants to prove their pleas and justify their distraint : and on the 23rd August following, finding that they had given no evidence in support of their distraint, decreed the suit. From that order comes this appeal.

Undoubtedly the defendants have been dilatory ; but the moonsiff's proceedings are faulty, inasmuch as he did not appoint a day for hearing the suit under Section 12, Regulation XXVI. of 1814 ; and, failing that proceeding, did not satisfy himself that the parties were ready to proceed to trial.

The suit must be accordingly remanded. The moonsiff will be careful to fix a day for hearing of the case, and subsequently proceed upon the papers before him.

The value of the stamp of the appeal will be refunded.

THE 11TH MARCH 1851.

No. 457 of 1850.

*Appeal from the decision of Moultee Ferhatoollah, Moonsiff of Bhojpoore, dated 26th August 1850.*

Ramjye Deo,\* (Defendant,) Appellant,

*versus.*

Telokchand, (Plaintiff,) Respondent.

DURING the course of executing a decree held by this plaintiff, Telokchand, against Ramjye Pal, deceased, 5 k. 13-2 of lakhiraj land had been attached as the property of the deceased, debtor ; but a claim was preferred to it by Ramjye Deo, this appellant, on the ground of purchase from Ramjye Pal and his possession of the land after summary enquiry being proved, the attachment was withdrawn. The decreeholder, Telokchand, now sues regularly for an order declaratory of this right to sell the land in question as the estate of his debtor.

The moonsiff has disposed of the case without taking proof from either party. It is the main ground of his decree that the defendant gave no evidence in support of the validity of his purchase, but here the moonsiff overlooked the fact that the possession of the (defendant) appellant by the summary proceeding had been affirmed, and that, if one party more than another was bound to furnish evidence for the disposal of this regular suit, it was more incumbent on the plaintiff to show cause for questioning the validity of the title which the defendant pleads. I myself exempt neither from the necessity of supporting their rival issues with requisite evidence, but the case, as it stands, is incomplete and must go back.



The moonsiff, further in his decree, indicates a ground of enquiry which may be of the utmost consequence to a right judgment. He alludes to an answer filed by Polutree, widow of the deceased debtor, on the very day of his decision, in which she alleged that the defendant, Ramjye, far from having bought the land in Chyte 1208, leased it from her, as her tenant. The moonsiff takes no proof of this statement; nay, he takes the statement of the defendant herself as proof.

The suit is accordingly remanded: the value of the stamp of the appeal will be refunded.

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THE 13TH MARCH 1851.

No. 445 of 1850.

*Appeal from the decree of Moulvee Nazeerooddeen, Sudder Ameen and Sudder Moonsiff, dated 29th August 1850.*

Ramdoolal Pal, (Defendant,) Appellant,

*versus*

Shumboonath Deo, (Plaintiff,) Respondent.

By the decree, against which this appeal is preferred, it was found that Ramdoolal Pal, who had acquired a decree against Shumboonath Deo and Neechun, in execution realized the full amount with all costs from Shumboonath Deo, and also privately in communication with Neechun had taken on account of the same decree rupees seven from him. The payment by Shumboonath is admitted by appellant himself; so the three witnesses whom he himself adduced as if to show that he got nothing from Neechun, show that he did receive seven rupees from him. Accordingly the sudder moonsiff directed Ramdoolal to repay the sum sued for by the plaintiff.

In his appeal Ramdoolal overlooks altogether the evidence upon which the sudder moonsiff's judgment was grounded; charging the other parties with fraud, and pointing to some minor discrepancies between the sum actually due under the old decree, and the sum mentioned in the receipt which he gave to Neechun. Clearly he did levy the sum decreed to him twice over to the extent above stated: and the decree of the lower court must be affirmed. I could only wish that the form of the action permitted me to lay a heavier charge upon the appellant than the simple refund which he has now to make.

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THE 14TH MARCH 1851.

No. 439 of 1850.

*Appeal from the decree of Moulree Abool Hossein, Moonsiff  
of Hathazaree, dated 20th August 1850.*

Shahamut Alec, (Defendant,) Appellant,

*versus*

Aftaboodcen Kazee, (Plaintiff,) Respondent.

THIS plaintiff, kazee of Hathazaree, sued the defendant to recover from him 1 rupee as a fee, due to him upon the marriage of his son Zinut Alec. Aftaboodcen, the plaintiff, does not say that he officiated at the marriage; or that Shahamut Alec agreed to pay him a fee: on the contrary he states and proves that Shahamut Alec, without giving him notice, employed one Suffer Alec to go through the ceremony.

The moonsiff decreed the claim; but I agree with the appellant that the plaintiff, respondent, has quite mistaken his rights under the law.

He could only claim a fee under the circumstances of this case, upon the supposition that the law required all marriages within his jurisdiction to be performed by him alone; but this is by no means the case. If Shahamut Alec chose to have his son married by such aid as Suffer Alec could render, I find no law that compelled him to apply to the plaintiff. The law does not say that the public kazees only are competent to perform marriages: and, no doubt, the purpose of the nomination of a public kazee with respect to marriages, is to provide for the community a qualified person whose services shall be available when required.

I must therefore reverse the decree of the lower court, and dismiss the suit, with all costs payable by the plaintiff.

THE 11TH MARCH 1851.

No. 447 of 1850.

*Appeal from the decree of Mr. Finney, Moonsiff of Bhuttearee,  
dated 24th August 1850.*

Mahomed Buseeroollah, (Defendant,) Appellant,

*versus*

Mahomed Kamil, (Plaintiff,) Respondent.

PLAINTIFF professing to hold k. 1-12-3 as tuppa under the Noabad talook Data Ram, at the rent of rupees 1-14-1 yearly, as settled by decree, sued to compel the present talookdars to receive that rent for the years 1210 and 1211. In answer, the talookdar pleaded that, on the 3rd Srabun 1211, plaintiff with two other

persons entered into a new settlement with them for k. 9-10-3, at rupees 15-8, annual rent.

Now I find that the moonsiff's enquiry has been incomplete. In his decree he admits that it was not clear that the bond referred to in the plaint was the same as that entered in the kubooleuts produced by the defendant; and without determining that point, he declares these kubooleuts to be invalid. Thus it may be the moonsiff's decree has the effect of questioning settlements with respect to which no suit had been instituted.

Moreover, on referring to the proceedings, I observe that the daghs of the land, for which plaintiff got a decree on the 14th March 1848, (on which occasion his rent was assessed at rupees 1-14-1) totally differ from those specified in the defendant's settlements. The former comprise various numbers from Nos. 2081 to 2150; while the defendant's settlement daghs run from 5042 to 5314. So far then it appears that the parties to the suit have contended about a quite distinct matter.

This should be reconciled; and the moonsiff before pronouncing judgment in the case must satisfy himself, that the plaintiff and defendants urge their conflicting pleas with respect to one and the same parcels of land.

The value of the stamp of the appeal will be refunded.

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THE 15TH MARCH 1851.

No. 450 of 1850.

*Appeal from a decree of Khyroollah Shah Budukshanee, Moonsiff of Zurowurgunge.*

Dagun Ramdass, (Defendant,) Appellant,

*versus*

Musst. Heera Thakurane, (Plaintiff,) Respondent.

AFTER a summary enquiry held upon an application preferred to me by this appellant, it appeared that the permanent residence of the appellant is in zillah Tipperah, and that before the preliminary notices of a pending action as required by Sections 21 and 22 of Regulation XXIII. of 1814, had been completed, the appellant had left this district, and was beyond the jurisdiction of the moonsiff from the time of the proclamation being served till the suit was disposed of.

I therefore think that the justice of the case requires the suit to be remanded to the moonsiff to give the appellant an opportunity of defending the action.

The moonsiff will also be careful to give the plaintiff an opportunity of serving any fresh notices she may think necessary on a defendant, Goorooershah, who is also alleged to have been absent.

The value of the stamp of the appeal will be refunded.

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THE 22ND MARCH 1851.

No. 6 of 1850.

*Original suit.*

Kasheenath Chuckerbuttee, (Plaintiff,)

*versus*

Magun Chunder Ayn, (Defendant.)

THIS suit was instituted to recover the balance of a bond for rupees 750, lent to the defendant on the 25th Srabun 1210, and interest. Plaintiff giving credit for a payment to the amount of rupees 308, made by defendant on the 17th Assar 1211.

Defendant answered that no money was given to him; that he against his will was made to sign a paper on account of a debt contracted by Gour Chunder Chuckerbuttee; and that it was understood not he, the defendant, but Gour Chunder, should pay the sum due to the plaintiff.

Thus to state the case, is to state the only issues raised. Plaintiff has filed the bond granted to him by the defendant, and has proved the execution of it by the latter, and indeed the repayment by the defendant of the 308 rupees, credited on the face of the bond.

Defendant served a subpoena on certain witnesses, these witnesses have not attended, and on the 24th February last he was required within three days to take whatever steps he thought necessary to promote his defence, but he has done nothing.

The case of the plaintiff being, therefore, proved, a decree must pass for principal, interest and costs.

THE 25TH MARCH 1851.

No. 455 of 1850.

*Appeal from the decree of Mr. Finney, Moonsiff of Bhuttearee, dated 28th August 1850.*

Shumshere Ali and Amanut Khan, (Defendants,) Appellants,

*versus*

Phooljan, (Plaintiff,) Respondent.

THIS appeal is preferred against a decree of the moonsiff, who, finding that the appellants and others had in Bysakh 1211 dispossessed the plaintiff Phooljan of the 1 kanee of land sued for, ordered this land to be restored to her. Having gone through the proceedings, it is obvious to me that the moonsiff had no alternative but to pass the order he did. On the part of the plaintiff six witnesses were examined, who stated that the land had been held by the plaintiff; that she got it from her husband, Futeh Ali, and that to Futeh Ali it came from his father, Teyub Manjee. The witnesses trace back the possession of these parties for 24 years, or far

as long as they know any thing. On the other hand defendants appellants, adduced only two witnesses, and the statements of these are unsatisfactory. Both sides say that the land forms part of a talook Doollub Hossein; for the plaintiff it is shown that the disputed kanee which constituted Teyub Manjee's share of that talook, whereas appellants profess to hold to have held it jointly with other land; but they furnish no data from which the constitution of this talook or their rights, on account of it, can be inferred.

It is true that in the deed filed by the plaintiff, whereby certain land was transferred to her by her husband, not talook Doollub Hossein but Talook Ata Hossein is spoken of; but at the same time the land is spoken of as his father's share, and especially do I repeat that for the land in dispute, the evidence of the plaintiff, respondent, largely preponderates. Defendants, appellants, were cautioned three several times to be prepared with their proofs, and I must take the proceedings as complete.

I affirm the decree of the lower court.

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THE 27TH MARCH 1851.

No. 4 of 1851.

*Appeal from the decree of Sudder Ameen Moulvee Nazeerooddeen, dated 8th January 1851.*

Hidayut Khan and Busharut Khan, (Plaintiffs,) Appellants,

*versus*

Akbar Ali, (Defendant,) Respondent.

THIS suit was instituted to affirm the plaintiffs (appellants') right to hold the property of 9 kances 0-1 of land in mouza Khurundee, and to annul the possession of Akbar Ali, defendant, respondent, founded on his purchasing the compromised mehal, originally settled by the plaintiff.

Plaintiffs affirm that by a decree of the special commissioner, dated 23rd March 1838, the land was affirmed to be rent-free; that by an ameen of the civil court possession was given to them in conformity with the special commissioner's decree; and that after that Akbar Ali bought the compromised mehal which they had some years before engaged for, when it was sold for arrears of revenue on the 9th June 1842.

The defendant, respondent, joins issue with the plaintiffs as to the purport of the special commissioner's decree. He affirms that the appellants' compromise mehal was expressly excluded from the order which on the 23rd March 1838 the special commissioner passed, affirming the right of the parties before him to hold droon 9-8-11 free of rent: and in a carefully written judgment the sudder ameen found the fact to be as pleaded by the defendant.

On the 14th October 1835, Hidayut Khan and Bushurut Khan entered into a compromise settlement for 9 kanecs of lakhiraj land held by them, agreeing to pay three Sicca rupees annually as revenue to Government. So for the same tenure, named zimma Hajec Khan, other parties agreed to similar settlements. Subsequently allowing for those cases in which as it were judgment had been already confessed, the resumption officer proceeded to resume the remainder of this zimma. The resumption proceedings bear the date of the 30th July 1836 ; in the body of this roobukaree, the land for which compromises had been taken are detailed ; among these is by name and description entered these appellants' mehal. It is expressly recorded that these compromises are exempt from the resumption under contemplation ; and excluding these droons 9-8-11 were ordered to be resumed. This proceeding was appealed to the special commissioner ; on trial the deputy collector's proceeding was reversed by the special commissioner ; but neither from the terms of the decree of this officer nor from the nature of the case, can I infer that the decree of the 23rd March 1838 referred to lands respecting which in review of the proceedings of the lower court no issue had been raised. The special commissioner must be understood to have released land which the deputy collector sought to resume, not land which the deputy collector expressly declared there was no necessity to resume. The special commissioner admits the validity of the sunnud by the production of which the lakhiraj tenure was defended ; but he does not at all discuss the merits of the settlement, which several months before the remaining land of the zimma had been resumed those appellants entered into.

It afterwards appeared to the revenue commissioner that, in fact more land had been compromised than the deputy collector had taken notice of. In a roobukaree, dated 25th August 1838, he showed that droons 5-6-2 had been compromised, about double the land exempted in the resumption ; for this reason as also because the parties who appealed to the commissioner held only a small portion of the whole land which the decree released, he sought for a reconsideration of that decree. This was not allowed ; but obviously though the special commissioner refused to take cognizance of a plea that urged the reduction of the rent-free land in proportion to the entire extent of compromises effected, the original decree was maintained, which affirmed the release of droon 9-8-11, exclusive of the compromise specified in the resumption proceedings.

It is possible, and it may be admitted, that the ameen in execution of the special commissioner's decree gave or intended to give appellants possession of the disputed compromise ; but the proceedings of the ameen had no virtual effect ; plaintiffs themselves admit that Akbar Alee has taken rent from them, and both by summary and regular decrees has Akbar Alee's right to rent been affirmed. This question for example came before the judge in a regular appeal on

the 27th February 1847 : on that occasion, though it had been pleaded that the compromise had been quashed by the special commissioner, and the lands declared rent-free, the judge maintained the contrary and affirmed the right of Akbar Alea as owner of the compromise to receive rent from the occupants, these appellants.

For these reasons I affirm the decree of the lower court.

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PRESENT : S. BOWRING, ESQ., OFFICIATING ADDITIONAL  
JUDGE.

THE 4TH MARCH 1851.

No. 562 of 1850.

*Regular Appeal from the decision of Moulvee Abdool Futteh, Moonsiff of  
Deeang, dated 24th December 1850.*

Jeebusram Chowdry, (Defendant,) Appellant,

*versus*

Doorga Churn Chowdry, (Plaintiff,) Respondent.

SUIT instituted 14th August 1849, for possession of 2-1-2-1 of land, with wasilat, 60-11-8.

The plaintiff stated that previous to 1205 M. S., 3 ryots, Oodhub and others, paid plaintiff and his brother Jeebusram, the defendant, a jumma of 13 rupees, 2 annas, for 5 k. 5 g. of land in mouza Moor-phulla. In 1206 the brothers, plaintiff and defendant, separated, and on the 10th Assar 1207 the ryots gave a kubooleut for half the land they held to plaintiff at a jumma of 6-9. At the instigation of defendant they withheld their rent; but subsequently paid 10 rupees and sued plaintiff for the amount in another suit. The kubooleuts have been lost by fire, plaintiff has sold a part of the land he inherited to Mitthunjye, and now sues for the remainder.

The defendant Jeebusram replied as far as his contradictory and rather unintelligible answer could be understood, by giving the details of the land he held: he stated that the ryots had paid him, defendant, since 1202; that he, defendant, in 1185 and 1186 M. S., bought 8 kanees of lakhiraj land and paid for it from his own funds, and that by a farkhuttee, the father of plaintiff and defendant had renounced all right to this purchase; that he owns by purchase 12 annas, and by inheritance 2 annas in turuff Shantee Mykoondoo, or in all 14 annas, as appears by a jaedad and farkhuttee dated Bysakh 1186; that plaintiff, being indebted to muhujuns rupees 175, 4 annas, 6 pies, relinquished all his inheritance, on defendant Jeebusram taking on himself payment of his debts as can be shown by farkhuttee, dated Assar 1207. The defendant denied that the plaintiff ever had possession of the land he sues for, or that the kubooleuts of the ryots were ever given or destroyed by fire, as alleged.

Oodhub and other ryots replied, that the land was the property of defendant under whom they, the ryots, held.

The moonsiff observed that by the late survey, the land in dispute consisted of daghs 2103, 2108, 1923 and 1925, and 1927 and 1928, owned by plaintiff and defendant in equal shares and lying in three separate turufs; that defendant and plaintiff had separated in 1206,



and that the jaedad and evidence proved the land to be worth 2-8 per kanee; that though defendant had been called upon, he had exhibited no farkhuttee nor kubala of the land he says he has bought, and though a farkhuttee is noticed in the deputy collector's fysala, this mention is not sufficient to prove either the contents, or that the document is genuine; that if defendant paid plaintiff's debts he may settle for the amount separately; that the kubooleut dated 1202 was very suspicious, as previous to 1206 the land was ijmalee. He considered the land to have been inherited by three brothers, of whom one dying without other heirs, plaintiff and defendant succeeded to his share and decreed the case, ordering the ryots to settle with plaintiff, and Jeebusram to pay wasilat from 1206 with interest, less 10 rupees received from the ryots by plaintiff to him.

The defendant appealed, denying that plaintiff had proved his case, repeating his assertions relative to the farkhuttee, and complaining that the moonsiff did not send for the nutthees from the collectorate, and that his, defendant's, vakeel had not filed one of the farkhuttees given to him for that purpose.

#### JUDGMENT.

The plaintiff has proved by witnesses and by the survey chittas that the land was in 1837, the joint property of himself, the defendant, Jeebusram, and Ramdass, three brothers. The last dying, the other two, plaintiff and defendant, succeeded, each holding an 8 annas share. They subsequently separated, and plaintiff was ejected by defendant, assisted by the ryots. The defence is not very clear, as to whether the land is claimed by Jeebusram as his hereditary, or as his purchased property. The kubooleut dated 1202 given to him alone when the land was ijmalee, as admitted in case 566, and for towfeer land at a time the word towfeer was not used to designate any part of the turuf land by the revenue authorities, is unworthy of credit, and the farkhuttees and kubala he alludes to have been seen by no authority, or proved by any witnesses. If filed in the collectorate, defendant had ample opportunity to apply for them, or to request the moonsiff to call for the nutthees. A complaint might be made against the vakeel if he failed to perform his duty; but with the vaguely given dates, and the proof of the existence of any such documents being mention of one only of them, by a deputy collector, I cannot at this stage of the proceedings allow defendant to file them.

I, therefore, confirm the moonsiff's order, and dismiss the appeal.

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THE 4TH MARCH 1851.

No. 563 of 1850.

*Regular Appeal from the decision of Moulvee Abdool Futteh, Moonsiff of Deeng, dated 24th August 1850.*

Jeebusram Chowdry, (Defendant,) Appellant,

*versus*

Oodhub and other Plaintiffs, and Doorga Churn, (Defendants,) Respondents.

SUIT instituted 5th March 1849, to recover 10 rupees, rent illegally collected.

The plaintiffs stated that they held 5 k. 5 g. of land at rupees 11, and one goat, yearly jumma, which, previous to 1206, they paid to Jeebusram and Doorga Churn, and since then to the former only through his ijaradar Ram Dass; but that Doorga Churn defendant had forced them to pay rent 10 rupees to him on account of 1206 to 1209, which they did, and now sue to recover.

Doorga Churn defendant claimed the land as his property jointly with his brother, and objected to plaintiffs' description of it.

Jeebusram and Ram Dass said they had always collected of plaintiffs.

The moonsiff, for reasons assigned in foregoing case No. 562, decreed against Jeebusram.

Jeebusram defendant appealed, referring to the case No. 562.

JUDGMENT.

The right of Doorga Churn to the land having been adjudged in case No. 562, the moonsiff's order must in this also be confirmed.

THE 4TH MARCH 1851.

No. 566 of 1850.

*Regular Appeal from the decision of Moulvee Abdool Futteh, Moonsiff of Deeng, dated 24th August 1850.*

Jeebusram Chowdry, (Defendant,) Appellant,

*versus*

Mitthunje Rukhit, (Plaintiff,) and Doorgachurn, (Defendants,) Respondents.

SUIT instituted 16th August 1849, for possession of d. 1-1-2-2 nowabad land, in mouza Moorphulla, rupees 39.

The plaintiff stated that he purchased the above land of Doorga Churn, a defendant, who with his two brothers had inherited d. 22-5. One brother Ram Dass died, and the surviving two settled for it with Government ijmalee, plaintiff bought the land on 2nd Bhadoon 1210, and let it again in itmam to defendant, who resigned

in Falgoun of the same year, and in Assar following with the other defendants, ejected plaintiff.

Doorga Churn defendant admitted the sale.

Jeebusram defendant objected to the description of the land by plaintiff, and, as in the preceding case, referred to the farkhuttee which he alleged to be in his possession.

Oodhub and other ryots replied that they had always paid Jeebusram.

The moonsiff observed that Doorga Churn's right to the land was evident, and the sale proved, while Jeebusram had not exhibited any farkhuttee, he decreed the case.

Jeebusram defendant appealed, referring to case No. 562, denying his brother's right to sell, and saying that his vakeel had neglected to file the farkhuttee.

#### JUDGMENT.

The sale and purchase of the land being admitted, it only remains to adjudge on the right of Doorga Churn. The land, as shown in this and in case No. 562, was surveyed as his and his brother's, and Jeebusram has failed to show how he obtained exclusive possession. If he has any charge against his vakeel, it may be preferred, but without proof of the existence of the documents he has so often quoted, I cannot now entertain it. The appeal is dismissed.

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#### THE 6TH MARCH 1851.

No. 572 of 1850.

*Regular Appeal from the decision of Moulvee Syud Jonab Ali, Moonsiff of Suthanneeah, dated 28th January 1850.*

Abdool Baree Khan, (Defendant,) Appellant,

*versus*

Muddun *alias* Budul Chundee Churn and others, (Defendants,) Respondents.

SUIT instituted 13th March 1850, for recovery of rupees 2-8 rent, illegally collected, and damages, total 5 rupees.

The plaintiff stated that he held 2 kances of land at 4 rupees jumma in turuf Bownanee Sunkur, the property of Chundee Churn and others; but under Abdool Baree, the owner of turuf Buddhoo Gholanee, he held no land whatever; notwithstanding which Abdool Baree, in Assar 1211, attached his property for an alleged arrear due for 1210, and compelled him to pay 2-8, though he, defendant, gave a dakhila for 2 rupees only.

Abdool Baree replied that the plaintiff was indebted 2 rupees, 9 pie, for land held under him, defendant.

Chundee Churn and others replied that the land held by plaintiff had always formed part of their zemindaree. Plaintiff had held it since 1206.

The moonsiff observed that it had been proved by documents and witnesses, that plaintiff had always paid to Chundee Churn; that though called on, Abdool Baree had filed neither his wasil-bakee nor the survey chittas, and that the kubooleut filed was from the doubtful testimony of the witnesses and writer unworthy of credit; he decreed for plaintiff.

The defendant Abdool Baree appealed, repeating his defence, and asserting the kubooleut to be genuine.

#### JUDGMENT.

The kubooleut is written on old paper and with new ink, and the writer and witnesses speak doubtfully in their deposition. This kubooleut cannot be allowed to weigh against the evidence of continued payment to the owners of turuf Bowannee Sunkur, especially as it was in the power of appellant to file his wasil-bakee and the survey chitta, if he really has a right to the land cultivated by plaintiff. I dismiss the appeal.

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THE 11TH MARCH 1851.

No. 398 of 1851.

*Regular Appeal from the decision of Moulvee Syud Jonab Ali, Moonsiff of Satkanneeah, dated 21st June 1850.*

Abdool Gunny Sikdar, (Defendant,) Appellant,

*versus*

Mahomed Ali and Raj Beebee, Plaintiffs.

Fuzl Ali Khan and others, (Defendants,) Respondents.

SUIT instituted 15th March 1849, for possession of 13 gundahs, 1-1 of land, with mesne profits, 16 rupees.

The plaintiffs, the son and widow of Yar Mahomed, deceased, stated that they held an hereditary etmam in turuf Noorchumna, of 1 k. 12-3 c. nowabad land, measured as dagh No. 2224, and paid the rent regularly; that they were ejected by defendant, Abdool Gunnee, who collects from the ryots of 13 g. 1-1 of the land. They claim wasilat at 1 rupee 8 annas per kanee, from 1201 to 1210 M. S.

Abdool Gunnee defendant replied that the land forms part of his talook. The plaintiffs hold 19 g. 2 c. of other land as jotdars.

Fuzl Ali Khan replied that the land was formerly occupied by Shamut Ali and given by him, Fuzl Ali Khan, as talook to Abdool Gunnee.

Abdool Sutr and other defendants said that the land was the talook of Abdool Gunnee.

The moonsiff observed that the issue was whether plaintiffs had held previous possession and been ejected by defendant; he considered the chitta to prove that dagh 2224 was in their possession at the time of the survey, and that the dakhilas proved their right, he decreed for them and gave wasilat from 1201.

Abdool Gunnee defendant appealed, repeating his defence.

#### JUDGMENT.

The chitta of the survey and the evidence of the witnesses prove that the land was formerly in the occupation of the plaintiffs, and that they were ejected by the defendant, and the evidence of defendant's witnesses does not rebut this. The dakhilas filed do not show that the rent paid was for this land, and no reason whatever is assigned for the delay in bringing this suit. On this account I shall refuse wasilat, and confirm the moonsiff's order only so far as regards the right to the land, and direct Abdool Gunnee to settle with plaintiffs as ryots, or to vacate all that part of dagh No. 2224, now held by him, within one month of this order, and to pay all costs in proportion of the amount awarded.

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THE 11TH MARCH 1851.

No. 575 of 1850.

*Regular Appeal from the decision of Moulree Hadde Ali, Moonsiff of Rungunneeah, dated 27th August 1850.*

Mahomed Ali, (Plaintiff,) Appellant,

*versus*

Kummur Ali, Musst. Soondue and others, (Defendants,) Respondents.

Suit instituted 8th March 1850, for settlement of land, value 4 rupees, 8 annas, and wasilat, with interest 60-12.

The plaintiff stated that he held a jumma ryottee tenure under turuf Syud Mahomed Arshut, which turuf was sold in 1204 and purchased by Ramgopal and Kisto Kishore Mundee; that by a decree, dated 15th June 1846 his (plaintiff's) jumma ryottee tenure was declared to be good, and he obtained possession accordingly; but that Kummur Ali, a ryot, holding 1 k. 15 g. refuses to pay rent. Plaintiff, therefore, sues for settlement and arrears from 1204.

Kummur Ali defendant objected that plaintiff had not said he ever collected of him, defendant. He, Kummur Ali, and plaintiff were equally descended from Ameer Mahomed, their grandfather, and the father of both plaintiff and defendant being sons of Ameer Mahomed, entered into an agreement that defendant's father should hold the 1 k. 15 g., which for many years had been done by father and son, who never paid rent.

The moonsiff observed that plaintiff, when questioned, admitted the relationship of defendant, nor could plaintiff explain how the land come to be so unequally divided, he dismissed the suit.

The plaintiff appealed asserting his case proved, while defendant's was not.

#### JUDGMENT.

No written documents have been filed by either plaintiff or defendant, and the two or three witnesses brought forward are not sufficient evidence to decree this case; plaintiff has not shown that rent was ever paid for the land, and the only reasonable supposition is that it has been held rent-free by the defendant and his father in return for relinquishing the one-half of the jumma ryottee. I dismiss the appeal.

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THE 11TH MARCH 1851.

No. 576 of 1850.

*Regular Appeal from the decision of Moulvee Hadee Ali, Moonsiff of Rungunneeah, dated 23rd August 1850.*

Ram Hurry Beoparee, (Defendant,) Appellant,

*versus*

Kylas Chunder, (Plaintiff,) Respondent.

SUIT instituted 24th July 1850, to recover 60 rupees, value of 100 areas of mustard seed as per tumusookh.

The plaintiff stated that, on the 6th Maugh 1209, he advanced to defendant 25 rupees on his engaging to deliver 100 areas of sirsoon, which he failed to do.

The moonsiff decided the case *ex parte*, and decreed for the seed, or 50 rupees as the value.

The defendant appealed, stating that he was ready with his evidence, which the moonsiff did not take, and that the transaction was not a *bond file* one, the delivery of the sirsoon being merely stipulated for to evade the usury laws.

#### JUDGMENT.

The moonsiff seems to have decided this case to make up the number of his suits. On the 26th July he gave the defendant two days to file his reply: on the 12th August he held his roobukaree *ex parte*, and on the 19th idem his roobukaree under Act XV. of 1850. I remand the case for this irregularity, and expect the moonsiff will in future be more careful.

Value of stamp to be refunded.

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THE 11TH MARCH 1851.

No. 577 of 1850.

*Regular Appeal from the decision of Moulvee Abdool Jubbur, Moonsiff of Issapore, dated 21st August 1850.*

Jan Ali Chowdry, (Defendant,) Appellant,

*versus*

Rumzan Ali, (Plaintiff,) and Ali Reza, (Defendant,) Respondent.

SUIT instituted 16th March 1850 for 10 rupees, value of a bullock, illegally distrained.

The plaintiff stated that the defendant held a decree against Suffer Ali, with whom plaintiff has no transactions, and that when attaching Suffer Ali's property, a bullock of plaintiff was also attached, and though he procured an order from the moonsiff to release it, the defendants, the decree-holder and zemindar did not do so. Plaintiff therefore now sues.

Jan Ali defendant replied that plaintiff had received his bullock from Ali Reza.

Ali Reza did not appear.

The moonsiff decreed for 8 rupees, considering that Ali Reza was servant to Jan Ali, whose witnesses differed in their statements as to when the bullock was delivered up to plaintiff.

The defendant Jan Ali appealed complaining that plaintiff did not sue for seven years, and that Ali Reza had not been held responsible.

#### JUDGMENT.

The distraint of the bullock and order to release it are admitted, and, if given up to plaintiff, a receipt should have been taken from him. It has been asserted and not denied that Ali Reza was servant to Jan Ali, if so, both defendants might be properly held responsible for the value of the property not forthcoming; two witnesses, who differ, cannot be allowed to be sufficient proof of delivery of the property. I dismiss the appeal.

THE 12TH MARCH 1851.

No. 582 of 1850.

*Regular Appeal from the decision of Moulvee Syud Jonab Ali, Moonsiff of Satkanneeah, dated 23rd August 1850.*

Moulvee Mahomed Shufeezoollah, (Defendant,) Appellant,

*versus*

Chundun, (Plaintiff,) Jeebun and others, (Defendants,)

Respondents.

SUIT instituted 8th December 1849, to cancel the commissioner's rooeedad, and recover rupees 32, value of property distrained, with damages.

The plaintiff stated that in 1207 Mahomed Jeebun and other defendants let 4 kancees nowabad land in ijara, to Moulvee Mahomed Shufeezoollah, for four years; that Mahomed Shufeez took a kubooleut for a rent of 10 g. 8 from plaintiff for the land, but never gave him possession. Jeebun and others paid the rent for 1207, 1208 and 1209, and for that of 1210, the defendant, Mahomed Shufecz, distrained on plaintiff and sold his property.

Mahomed Shufeezoollah admitted he had distrained for 15-8, being 10-8 hal, and rupees 5, bukya-khuzana. He asserted that plaintiff had admitted having possession.

Jeebun, Aman Ali and others admitted the truth of plaintiff's statement.

The moonsiff decreed for plaintiff, observing that possession of the land by plaintiff had not been shown; that defendant's witnesses differ in their statements; that no proof of previous collection had been given, and that, though the kubooleut showed the rent to be rupees 10-8, defendant had distrained for rupees 15-8.

The defendant Mahomed Shufeezoollah appealed, complaining that all his witnesses were not examined, and that the moonsiff had not held the other defendants liable.

#### JUDGMENT.

The defendant admits the demand to be rupees 10-8 yearly, and that he distrained for rupees 15-8, as rent due for 1210, this was therefore illegal. The plaintiff objects that he did not obtain possession, and no proof that he had has been offered by defendant, whose witnesses differ in their statements: all that he gave were examined; but he offered no evidence of the only point in dispute and possession of the land which plaintiff showed not to be with him. I dismiss the appeal.

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THE 13TH MARCH 1851.

No. 583 of 1850.

*Regular Appeal from the decision of Mr. L. W. Hutchinson, Moonsiff of Putteeah, dated 24th August 1850.*

Ameer Mahomed Sikdar, (Defendant,) Appellant,

*versus*

Shamut Ali, (Plaintiff,) Respondent.

SUIT instituted 21st December 1849, for recovery of value of property illegally distrained, including damages, rupees 7-12-6.

The plaintiff stated that with his partners he held in turuf Ramkissore k. 11-0-2, at a jumma of rupees 21-8-10, his share being rupees 7-2-10; that the land has been granted as talook to Ameer Mahomed by the zemindar to whom Ameer, he, plaintiff, has paid since 1209; that besides this land plaintiff holds none



other in turuf Ramkissore, or any in the share of Sumporna; but that defendant has distrained his property for an alleged balance due on k. 1-15, in turuf Ramkissore, malika Sumporna, and sold the same through the sale commissioner.

Ameer Mahomed replied that plaintiff and Sono held k. 1-15 up to 1204, plaintiff then took it on pottah in 1206, and on his failing to pay, defendant distrained.

The moonsiff observed that plaintiff held no land in Sumporna's share in the estate; that the kuboolout had been disallowed by a punchayet, and that defendant's account given before the salis, does not agree with his defence in this suit, he decreed for plaintiff.

The defendant appealed denying that the assertion regarding the salis had been proved, on the award carried out that the land now does not agree with what it then was.

#### JUDGMENT.

The plaintiff has proved the distraint and sale of his property by defendant, and has filed an award of a salis, declaring the kuboolout to be not genuine. He has also examined witnesses to show that he holds no land; but that which he admits he does in the plaint. Against all this the defendant has no proof; but the kuboolout which I reject as the salis and the moonsiff has already done. I dismiss the appeal.

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THE 13TH MARCH 1851.

No. 584 of 1850.

*Regular Appeal from the decision of Moulvee Hadee Ali, Moonsiff of Rungunneeah, dated 17th August 1850.*

Abelochun, (Plaintiff,) Appellant,

*versus*

Ameer Shah, Mahomed Hossein, and others, (Defendants,) Respondents.

SUIT instituted 23rd February 1850, to cancel an order in a suit under Regulation V. of 1812, to recover costs 2-0-4, and rent, with interest, from 1209 to 1211-10-12 4.

The plaintiff stated that the defendant Ameer Shah took in his talook 1 kanee of land at 3 rupees for the first year and 2 for the following, but failing to pay, plaintiff attached his property when defendant gave security, and the case was decreed in his favor by the deputy collector.

The defendant Ameer Shah replied that the land was held by him under Mahomed Hossein and other talookdars, not under plaintiff.

Mahomed Hossein and other defendants corroborated this statement.

The moonsiff observed that the ameen's report showed the land to be in plaintiff's talook; but that defendant had only had possession of a part 12 g. not 1 kanee; that plaintiff had not proved the kubooleut either before the deputy collector or the moonsiff. He dismissed the case as the facts had been misrepresented by plaintiff.

The plaintiff appealed, stating that defendant had held the land and left a part waste; that he (plaintiff) did bring witnesses to the kubooleut, and that the moonsiff should at least have given rent for 12 gds. in possession of defendant.

#### JUDGMENT.

The plaintiff has not proved his kubooleut, nor does it appear that he brought his witnesses as alleged in the appeal. His witnesses deposed that he (plaintiff) had possession of the land, and the only evidence in his favor is the report of the ameen, who states that the land is in plaintiff's talook, and partly occupied by defendant.

This is insufficient to allow a decree in his favor, and I therefore dismiss the appeal.

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#### THE 14TH MARCH 1851.

No. 586 of 1850.

*Regular Appeal from the decision of Moulvee Abdool Jubbar, Moonsiff of Issapore, dated 26th August 1850.*

Rehmutoollah, (Defendant,) Appellant,

*versus*

Ramchurn, (Plaintiff,) Respondent.

SUIT instituted 15th February 1850, for possession of 2 k. 10 g. of land, with wasilat and interest, 62-5.

The plaintiff stated that Chunder Monee Thakoor held under a decree of court k. 4-13-1 as etmam in Shikumee, talook Shureeff Asar, and on the 5th Aughun 1207 sold her rights to plaintiff; that Suroop Thakoor and others, at the instigation of Rehmutoollah, have encroached on the land of plaintiff, and now hold k. 2-10, which is let to ryots of whom Rehmutoollah collects.

Rehmutoollah and Motecoollah replied that they held the share of Juggut Thakoor in the etmam, and had let it to Suroop Thakoor and others till 1210, when they resigned. Suroop Thakoor and other defendants replied that Rehmutoollah had purchased a part of the share of Chundromonee and sublet it to them; plaintiff might settle with Rehmutoollah.

Foujdar and other ryots, defendants, replied that they paid to Rehmutoollah.

The moonsiff observed that all the defendants admitted the land to be plaintiff's, endeavouring merely to throw the liability for

wasilat one on the other : he considered Rehmutoolah responsible in consequence of a durkhast filed by him in another suit, claiming the land as purchased by him of Chundromonee ; the kuboo-leuts granted and dakhilas signed by him, and decreed accordingly, deducting sums still due by the ryots for 1211.

The defendant Rehmutoolah appealed, stating that plaintiff had not proved his case ; that he (appellant) had been induced to give the durkhast claiming the land as his own by Suroop Chunder, and that the dakhilas were not proved.

#### JUDGMENT.

The plaintiff has proved by a decree, dated 27th May 1832, and by witnesses his right to the land, which is not denied by defendant. Rehmutoolah certainly did file a durkhast, claiming the land as his own, and his present assertion, that he did so fraudulently, requires proof before it can be admitted. The dakhilas are his, and, if they should be for rent of other land, this should have been pleaded and proved, the assertion is not now admissible.

The appeal is dismissed.

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THE 14TH MARCH 1851.

No. 535 of 1850.

*Regular Appeal from the decision of Moulvee Zenutoollah, Moonsiff of Noaparah, dated 13th August 1850.*

Musst. Tunjeeb Beebee, (Defendant,) Appellant,

*versus*

Muhare Jan, Plaintiff, and Bakur Ali, (Defendant,) Respondents.

SUIT instituted 6th March 1848, to cancel the attachment by the decreeholder and the roobukaree of 1st February 1848, and release from attachment 9 k. 10 g. of land, jumma 10-2 and 2 tanks 3-16-11-25-12.

The plaintiff stated that she held the land in mouza Sultanpore by gift of her husband Bakur Ali, and that it formed a part of d. 2-14-9-2 given by him ; that Tunjeeb Beebee had attached it in execution of a decree against Zubulnissa (deceased) and that it is now for sale.

Bakur Ali defendant corroborated this statement.

Tunjeeb Beebee replied that the heir of Zubulnissa Kala Beebee was in possession ; that Bakur had no right to the land, his father, Shamut Ali, having died in his mother (Zubulnissa's) lifetime. She then objected to the stamp, and to the auction purchaser, in possession, not having been made defendant.

The plaintiff filed a supplementary plaint to make up the value of the stamp.

The moonsiff decreed for the plaintiff, considering that a decree of the principal sudder ameen, dated 17th May 1842, showed the land to be her's, and that although summoned, Tunjeeb Beebee had not appeared in court.

Tunjeeb Beebee appealed, repeating her defence, and asserting that Bakur Ali did not inherit of Shamut Ali; that the principal sudder ameen's decree declares the land to be the property of Zubulnissa; that she (appellant) could not attend the moonsiff's court owing to the inundation; and again, objecting to the stamp and to the moonsiff's order, allowing plaintiff to file a supplementary plaint, and to the auction purchaser not having been made defendant.

#### JUDGMENT.

The first issue in law is whether the plaintiff should not be nonsuited for having filed her suit on a stamp of too low value. The moonsiff allowed her to file a supplementary plaint, as under the Circular Order, 20th August 1841, para. 1, he was, I consider, competent to do, and as defendant did not appeal under para. 3 of the same Circular, the moonsiff's order will stand.

The second issue is whether the auction purchaser should not have been made defendant. The suit was instituted before the sale of the property; but, under Construction No. 1308, a supplementary plaint should have been filed after the sale had taken place.

It has not been pleaded, but it appears from the nisl, that the suit was transferred from Rowajan to Noaparali. On the 31st July the moonsiff issued an illaam to defendant (appellant) to plead, and on the 13th August, only thirteen days afterwards, decided the case in her absence, which until forty-two days had elapsed he was not competent to do.

I remand the case for re-trial that the plaint may be amended by the purchaser being made defendant, and the appellant, Tunjeeb Beebee, allowed to file such proofs as she may possess in the moonsiff's court.

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THE 15TH MARCH 1851.

No. 541 of 1850.

*Regular Appeal from the decision of Moulvec Zeenutoollah, Moonsiff of Noaparali, dated 14th August 1850.*

Musst. Futteli Beebee and Mooshruff Beebee, (Defendants,) Appellants,

*versus*

Zeenut Beebee, (Plaintiff,) Respondent.

SUIT instituted 4th May 1850, for possession of k. 3-1-2 of land and tank and correction of the survey chittas, by expunging the name of Sudderoodeen as dukkar, and recording the name of plaintiff in lieu thereof, 63 rupees, 12 annas.

The plaintiff stated that her father, who died about sixteen years ago, had held the above land which is lakhiraj ; that on his death plaintiff and her mother succeeded to the possession, when in 1202 they were ejected by Sudderooddeen, who caused the land to be measured as his own. Plaintiff, on coming of age, claimed the land, but Sudderooddeen, and after his death, his heirs refused to vacate.

The defendants replied that plaintiff's father had sold the land to Sudderooddeen for 40 rupees in 1195.

The plaintiff objected that the date of the kubala was not given.

The defendants replied that the date of the kubala was 12th Assin 1195.

The moonsiff considered that the land being a religious endowment, could not be sold. He deemed the kubala forged, because the whole of the deed was written by one person, and the date by another, because plaintiff had produced a kuboolent of Sudderooddeen as kishkar, and this point had not been met. The defendants say Ameena Beebee, mother of plaintiff, signed the kubala, and the witnesses depose differently. One witness Herasooddeen is thirty-two or thirty-three years of age, and at the time of the alleged sale must have been a child. The ink of the kubala is quite fresh. Considering it proved that Ameena, widow of the plaintiff's father, had succeeded to possession of the tenure, he decreed for plaintiff.

The defendants appealed, explaining the moonsiff's objections to the kubala, complaining that no ishtchar was issued for other heirs to the tenure ; that plaintiff did not sue for mesne profits, and of the delay of so many years.

#### JUDGMENT.

The right of plaintiff's father to the land is admitted, and the issue is whether the kubala is genuine. As the profits from the land were not misappropriated, but applied to religious purposes, the sale might, on this account, stand, but I agree with the moonsiff in rejecting the kubala.

The paper on which it is written has every appearance of age, and the ink is quite fresh, the same can which preserved the one would have preserved the other. The defendant did not at first give the date of the kubala. Ameena Beebee, who is said to have signed the deed, is quite forgotten by the witnesses, and plaintiff has shown that her mother was ejected from the tenure after the father and husband's death.

The objections urged in appeal are new. The heirs may complain, if not summoned, but this is no ground of appeal to defendants who may hereafter plead that they were not sued for wasilat on this occasion, if an action should be instituted for the mesne profits.

On the ground that the kubala is not a genuine document, I dismiss the appeal.

THE 15TH MARCH 1851.

No. 587 of 1850.

*Regular Appeal from the decision of Mr. L. W. Hutchinson, Moonsiff of Putteeah, dated 6th September 1850.*

Shumshare Ali, (Plaintiff,) Appellant,

*versus*

Mohunt Podar, (Defendant,) Respondent.

SUIT instituted 9th February 1849, to cancel the summary proceedings and a forged kubooleut, and recognize plaintiff as purchaser of 6-15-2 of land, 88-14-5.

The plaintiff stated that Mohunt Podar had held a nowabad tenure of 6-15-2, in mouza Kuleeush, turnf Noorchumna, at a Sicca jumma of rupees 6-12-5; that the land fell waste when defendant let it to plaintiff in 1208, for the payment of the sudder jumma, and on the 28th Assin of the same year sold it to him for rupees 61; that he (plaintiff) paid 1 rupee as revenue in 1209; but that defendant sued him (plaintiff) on a forged kubooleut, dated 18th Bhadoon 1208, and obtained a decree.

Mohunt Podar defendant denied that he had ever sold the land. The kubala had not been admitted by the deputy collector, nor had there been any mutation of names in the ownership of the tenure, nor had plaintiff paid the revenue.

The moonsiff considered the kubala a fabrication, as it stated that the byenamah and ishtchar granted by the collector had been lost, and plaintiff by his own statement had taken no steps to register the deed of sale, to transfer the talook to his own name, or to ascertain defendant's power to sell; that the tehseeldar of the farmer deposed to having received 1 rupee of plaintiff, as agent only for the proprietor; he considered the kubooleut genuine, and dismissed the suit.

The plaintiff appealed, stating that he had proved his case; that defendant and the tehseeldar have combined against him; that he cannot write, and could not, therefore, have signed the kubooleut, nor can the person write who says he was the writer.

#### JUDGMENT.

Plaintiff admits possession of the land, the issue is whether the kubala is genuine. It is filed with the case, but is witnessed by persons living at a distance. Plaintiff paid no revenue except 1 rupee, and though the tehseeldar would not receive more from him, neither applied for a mutation of names, nor registered the deed of sale; there is nothing to prove the deed but very doubtful witnesses, supported by no collateral evidence whatever. The plea of not being able to write, and the inability of the alleged writer to do so, either should have been pleaded before the

moonsiff; I cannot entertain it. I consider the kubala a forgery, and dismiss the appeal.

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THE 15TH MARCH 1851.

No. 588 of 1850.

*Regular Appeal from the decision of Mr. L. W. Hutchinson, Moonsiff of Putteeah, dated 16th August 1850.*

Choitunnachurn, (Plaintiff,) Appellant,

*versus*

Afazoollah and Goluckchunder, (Defendants,) Respondents.

SUIT instituted 5th January 1850, to release from attachment 4 k. 5 g. 2 of land, to cancel the settlement of the same with Goluckchunder, and settle it with plaintiff, 9-10.

The plaintiff stated that his grandfather purchased the above land lakhiraj, and that it was at the survey included in turuf Mahomed Ruffee, forming daghs 539, 603 and 604, and settled with Goluckchunder at rupees 3-3-4, when the turuf was held khas; that Afazoollah bought the land of Goluckchunder; but finding it to be plaintiff's property, sued to have the purchase money returned, when the land was attached, and though plaintiff objected, his petitions were rejected by the moonsiff and additional judge, and the property being now for sale as that of Goluckchunder, plaintiff brings this suit. At the time of the survey plaintiff was a minor, he came of age in 1205 (1843 A. D.)

Goluckchunder defendant admitted the truth of plaintiff's statement, the measurement and settlement with him (Goluckchunder) were benamee only.

Afazoolah replied that Goluckchunder is the owner of the land as measured to him.

The moonsiff observed that plaintiff had produced witnesses to his right, of whom two had deposed before in the summary proceedings when their evidence was rejected, and it was not now more worthy of belief that the settlement was made in 1844, and plaintiff was of age in 1843, and as he did not then object, the plea of minority cannot be admitted; that Afazooddeen formerly admitted plaintiff's right, but finding himself in error, has now sued. He dismissed the suit.

The plaintiff appealed, stating that a decree dated 11th July 1818, would prove his right, and repeating his plaint.

#### JUDGMENT.

The only proof adduced by plaintiff is the petition of Afazoollah; that after he had bought the land of Goluckchunder, he found it to belong to plaintiff. The moonsiff has rightly considered this

as no positive proof whatever, as Afazoollah might correct this statement. The witnesses differ as to plaintiff's descent from Hurry Narayen, the original owner of the land; consequently a decree in his favor, as pleaded in appeal, would not show plaintiff's right. Goluckchunder is equally descended from Hurry Narayen, and his right is altogether denied; the plaintiff was of age when the settlement was made, and might have challenged them if he could do so. The case is merely an attempt to defraud Afazoollah of the purchase money paid. The plaintiff has no proof to substantiate his pleas, and I therefore dismiss the appeal.

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THE 20TH MARCH 1851.

No. 283 of 1850.

*Regular Appeal from the decision of Moulree Syud Ahmed, Acting Moonsiff of Satkanneeah, dated 15th April 1850.*

Mahomed Munnoo, Jaffer Ali, and Potun, (Plaintiffs,) Appellants,  
*versus*

Jubber Ali Sikdar, Mokeen Ali, and others, (Defendants,) Respondents.

SURT instituted 21st December 1848, to record the names of plaintiffs in lieu of that of Jubber Ali Sikdar, in the survey chitta of k. 3-0-3 of land, and to cancel a kubooleut given to Jubber Ali, 15-4.

The plaintiffs stated that they held a talook called Shookur Mahomed, in turuf Noorchumna, besides which their father had 8 kanecs of land only. At the survey the land was measured as in their possession; but defendant Jubber Ali has sued them for rent under a forged kubooleut, and in connivance with the amlah has altered the chittas of survey, which plaintiffs now sue to correct.

Jubber Ali replied that plaintiffs had given the kubooleut voluntarily, and that the land forms part of his talook.

The moonsiff, referring to the case No. 284, dismissed the suit.

The plaintiffs appealed, referring to their petition and documents filed in the other case quoted by the moonsiff.

JUDGMENT.

For reasons stated in the case No. 284, this appeal is dismissed.

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THE 20TH MARCH 1851.

No. 284 of 1850.

*Regular Appeal from the decision of Moulvee Syud Ahmed, Acting Moonsiff of Satkanneah, dated 15th April 1850.*

Munnoo Potun and Jaffer Ali, (Defendants,) Appellants,

*versus*

Jubber Ali Sikdar, (Plaintiff,) Respondent.

SUIT instituted 19th August 1848, for settlement of k. 5-15-1 of land, and cancellation of deputy collector's order and mesne profits, total 63-12-2.

The plaintiff stated that the above land forming daghs 304 and 312 of the survey, is situated in his talook in turuf Noorchumna, and was held by Munnoo and others who paid rent till 1805. In 1209 Munno gave a kubooleut which has been lost : on non-payment of rent plaintiff distrained, but the deputy collector decided against him. The defendants replied that they have not possession of dagh 304 ; that the land is theirs, being part of their talook Shookur Mahomed ; they have sued to correct the chittas.

The moonsiff observed that the survey showed the daghs 304 and 312 to be in plaintiff's talook ; that most of the daghs forming the talook Shookur Mahomed had become the property of plaintiff ; that defendant had shown no right to the talook Shookur Mahomed, nor did it appear that they had objected at the time to the survey, and that they now did not claim the land absolutely as theirs, but as the property of their grandfather. The moonsiff disallowed the report of the ameen relative to dagh 304, and decreed for plaintiff.

The defendants appealed, stating, that dagh 304 is already in possession of plaintiff.

#### JUDGMENT.

This case and the preceding No 283, were tried together in appeal ; there appearing some doubt whether talook Shookur Mahomed is still existing or not, and, if existing, whether plaintiff's or defendant, or both, are entitled to inherit ; the appeal in this and case No. 283, was admitted to allow Mahomed Munnoo and other appellants to exhibit any documents they might possess to establish their rights, although upwards of three months have elapsed they have produced no evidence whatever, and I can, therefore, only, on authority of the survey and the evidence adduced for Jubber Ali, confirm the moonsiff's order, and dismiss the appeal in both cases.

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THE 20TH MARCH 1851.

No. 589 of 1850.

*Regular Appeal from the decision of Moonshee Muhomed Abkur, Moonsiff of Rauwojan, dated 28th August 1850.*

Muddhoram, (Defendant,) Appellant,

*versus*

Indronarain, (Plaintiff,) Respondent.

SUIT instituted 10th September 1849, for recovery of rupees 59-6-7, principal and interest, due on a bond.

The plaintiff stated that on the 8th Falgoun 1203, the defendant (appellant) and Ramshurn gave him a bond for 44 rupees to be re-paid in Jyte 1204; but in Chyte Ramshurn paid 13 rupees, 8 annas only: plaintiff now sues for the balance with interest.

The defendant Muddhoram replied that plaintiff had not given him 44 rupees, but 34 only, having deducted 10 for interest; that 17 rupees had been re-paid in 1204, and 25 as balance, in full, in 1208; that plaintiff promised to give up the bond, but did not do so.

The moonsiff considered the bond and re-payment of 13-8 rupees as proved, and defendant had brought no proof of his statement. Ramshurn had not appeared. He decreed the case.

The defendant appealed, objecting that the moonsiff had held no roobukaree under Act XV. of 1850, nor called on appellant for his proof.

## JUDGMENT.

The moonsiff's conduct has been altogether illegal. He held no roobukaree nor called on the parties to exhibit their proofs. On the 28th August plaintiff produced witnesses, when the case was at once given in his favor.

The case must be remanded, value of stamp to be refunded.

THE 20TH MARCH 1851.

No. 590 of 1850.

*Regular Appeal from the decision of Mr. L. W. Hutchinson, Moonsiff of Putteeah, dated 16th September 1850.*

Mahomed Ali and Shamut Ali, (Defendants,) Appellants,

*versus*

Khadim Ali and Hyder Ali, (Plaintiffs,) Sekunder and Iskander, (Defendants,) Respondents.

SUIT instituted 19th February 1850, to recover 2 rupees, illegally collected with damages, and cancel a chalan illegally taken, 4-12.

The plaintiffs stated that they held a kackhola called Dedalia, in the etmam of Sekunder and Iskander at 1 rupee jumma, which they paid up to 1210, when the etmamdars took the kackhola themselves; that under Mahomed Ali and Shamut Ali, they neither hold, nor ever held, any lease whatever; but that these defendants distrained on plaintiffs for rent of 1210, and took 2 rupees of them, forcing them also to sign a chalan for 12 annas, when they gave up the property attached. Sekunder and Iskander, defendants, corroborated plaintiffs' statement.

Mahomed Ali and Shamut Ali, defendants, replied that the kackhola was in their etmam, and that plaintiffs gave a kubooleut of their own free will.

The moonsiff decreed for plaintiffs, observing that defendants (appellants) had shown no right to the kackhola; that plaintiffs had proved payment by compulsion, and that defendants (appellants) had merely filed a kubooleut, though ample time for filing their exhibits had been allowed.

The defendants Mahomed Ali and Shamut Ali, appealed, complaining that their witnesses had not been summoned, and that their kackhola is called Burra Dedalia; that plaintiffs' witnesses are connected with Sekunder.

#### JUDGMENT.

The plaintiffs proved their case before the moonsiff, and the defendants (appellants) merely filed a kubooleut which they did not prove. On the 27th July the moonsiff ordered them to produce their witnesses, or take out a dustuk in two days; they did not obey the order, and on the 16th September, 1 month and 19 days afterwards, the suit was given against them. They now appeal, asserting the kackhola to bear a different name from that they gave in the lower court, and altering also the name of the village. I have frequently stated my intention of punishing all parties, leaving cases undefended in the lower courts, and their appealing on frivolous ground. In the present case the appellants appear to have had no other object in appealing, than to delay the execution of the moonsiff's decree. I therefore fine them 5 rupees each for a litigious appeal, and direct the nazir to levy the amount.

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## ZILLAH CUTTACK.

PRESENT : M. S. GILMORE, ESQ., JUDGE.

THE 6TH MARCH 1851.

No. 76 of 1850.

*Appeal from the decision of Gourbullub Ghose, Acting Moonsiff of Pooree,  
dated 27th September 1850.*

Mohunt Poorsuttum Das, (Plaintiff,) Appellant,

*versus*

Ram Kishen Poojah Punda, Gungadhur Mungraj Deolkurrun, Gungadhur Putnaik Turao, and Maharajah Ramchunder Deo, superintendent of the temple of Juggernath, (Defendants,) Respondents.

CLAIM, rupees 15-12-0, damages on account of loss incurred by the defendants refusing to accept as an offering to Juggernath, the *puntée bhoog*, prepared by the plaintiff.

The plaint sets forth that during the *dhul jatra* festival, at which time the representatives of Juggernath, viz., Dolgobind, Muddun Mohun and Ramkishen thakoors leave the temple and proceed down the principal street in the town of Pooree, a number of sunths and mohunts collect *puntée bhoog*, either in the verandahs of their houses or in sheds or stalls erected on the road side, for the purpose of offering it to the thakoors as they pass by; and that at the said festival, which took place in 1256 U., the plaintiff on 24th Phalgun being desirous of making an offering to the thakoors, prepared a stall adjoining the house of Sumboo Bartee, where offerings had formerly been made, and gave intimation of his intention to the poojah pundas, who directed him to obtain the permission of the superintendent of the temple; and he accordingly went to him, but being unable to comply with his demand for *russoom*, he failed to obtain his permission; however, notwithstanding this, he prepared the *puntée bhoog*, and on the arrival of the thakoors in front of his stall, he called on the poojah punda and other defendants in charge of them to accept his offering; but they refused, pleading that they had no authority from the maharajah to do so, and told him to throw it away, which he did, and he in consequence now sues for the cost of the articles thus destroyed.

Maharajah Ramchunder Deo defendant answered that the plaintiff who was formerly mohunt of the suddaburt muth at

Pipley Nour, and who had been dismissed from the said office for misconduct, had instituted the present false suit at the instigation of other evil-disposed persons, with the view to establish certain irregular practices without his permission, and he denied that the plaintiff had applied to him to be allowed to offer the *bhoog*, and stated that the place where the plaintiff alleges he collected his *bhoog*, was not at all a proper one.

Gungadhur Mungraj and Gungadhur Putnaik filed answers, denying all acquaintance with the plaintiff, and stating that they had no power to accept *punttee bhoog* for the thakoors, without the rajah's permission.

Ram Kishen Punda did not enter appearance.

The moonsiff, on the grounds that it was clear from the plaintiff's own showing that *punttee bhoog* could not be presented to the thakoors, without the rajah's permission, and that he had prepared the *punttee bhoog* after going to the rajah, and failing to obtain his assent to his making the offering, and likewise for other reasons recorded in his decision, held that the defendants were not responsible for the loss he had sustained, and dismissed his claim.

In appeal, the plaintiff urged that as it was on the public road that he erected the stall for the purpose of offering the *bhoog* to the thakoors, it was unnecessary that he should obtain the rajah's permission before doing so, &c.

#### JUDGMENT.

Since it appears from the plaintiff's own showing that he applied for the permission of the rajah, as superintendent of the temple of Juggernath, to erect a stall and collect therein *punttee bhoog* for presentation to the thakoors, when they paraded the town at the *dhol jatra* festival, and that the rajah withheld his permission, because the plaintiff was unable to pay the fee or *russoom* demanded from him; the plaintiff should, in the event of his disputing the right of the rajah to withhold his assent have sued him for damages, on account of injury to caste, and not have prepared the *punttee bhoog* which he knew would not be accepted; and as he did so, and it was destroyed or lost, because the poojah punda would not accept his offering without the rajah's orders, he must himself bear the loss. It is, therefore, ordered, that the appeal be dismissed without serving notice on the respondents.

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THE 7TH MARCH 1851.

No. 77 of 1850.

*Appeal from the decision of Gourbullub Ghose, Acting Moonsiff of Pooree, dated 24th September 1850.*

Sanund Paltah Singh, (Defendant,) Appellant,

*versus*

Brujoo Pater, (Plaintiff,) Respondent.

Sindhoo Chumputty, (Defendant,) absent in appeal.

**CLAIM**, cancelment of the deputy collector's order of the 6th October 1849, corresponding with the 23rd Assin 1257 U., giving Sanund Paltah Singh possession of 4 beegahs, 6 goonths, 5 biswas out of 8 beegahs, 12 goonths, 8 biswas of the jagheer (*dulye*) lands of Sindhoo Chumputty, in chuck Buddhce, mouza Tarkol, Ghur Nalsing, zillah Ramessur, killah Koordah; and to be put in possession under a pottah, dated 25th Koomboo (Phalagoon) 1256, corresponding with the 6th March 1849. Suit laid at rupees 56-4-4-16.

The plaintiff stated that Sindhoo Chumputty having succeeded to the possession of the jagheer lands, which belonged to his father Damoo Chumputty, on the 25th Phalagoon 1256, granted him a pottah of 4 beegahs, 6 goonths, 5 biswas, at an annual rent of rupees 2-13-4, for five years, and took from him rupees 14-2-8, in advance of rent, and that he got possession and cultivated a crop of *dhan* in 1257; but on the 23rd July 1839 Sanund Paltah Singh petitioned the deputy collector, representing that the land had been mortgaged to him for eight years on the 13th Jyte 1256 by Sindhoo Chumputty, to whom he had paid in advance the sum of rupees 32, and cultivated the crop of 1257; and the deputy collector decided the case in favor of Sanund Paltah Singh, and put him in possession of the land and the crop which he (the plaintiff) had cultivated; and he in consequence sued him for possession of the land, and the value of the crop, &c. He likewise stated that Hurry Chumputty, the brother of Sindhoo Chumputty, mortgaged 6 beegahs, 18 goonths, 12 biswas of land, to Sanund Paltah Singh in 1252, for a loan of rupees 20, but redeemed it in 1254, and cultivated himself in 1255.

Sanund Paltah Singh stated that after the death of Hurry Chumputty, who mortgaged the 6 beegahs, 18 goonths, 12 biswas of land to him, his brother Sindhoo Chumputty persuaded him to relinquish possession of the said land, on his executing an engagement on the 7th Phalagoon 1254, promising to give the defendant 2 bhuruns, 30 ghoons of *dhan*, during the remaining five years of the mortgage; that in 1255 he duly paid the *dhan*, and on his failing to do so in 1256, he (the defendant) resumed possession of the land; and subsequently, on the 13th Jyte 1256, Sindhoo Chumputty acknowledging that rupees 12 were still due by his brother Hurry Chumputty to him. The defendant borrowed from him the further sum of

rupees 20, and granted him an *ijarah pottah* for eight years; and when the plaintiff, in collusion with Sindhoo Chumputty, was about to dispossess him, he presented a petition to the deputy collector, who issued orders upholding his possession of the land.

Sindhoo Chumputty acknowledged having granted a pottah of the disputed land to the plaintiff, and stated that the pottah, under which Sanund Paltah Singh claimed possession of the land, was a forgery.

The moonsiff held that the execution of the pottah by Sindhoo Chumputty in favor of the plaintiff, and the fact of his having cultivated the disputed land in 1257, was satisfactorily established by the evidence of his witnesses; and he remarked that although the witnesses adduced by Sanund Paltah Singh had corroborated his statement, the pottah said to have been executed in his favor by Sindhoo Chumputty, exhibited certain interlineations and erasures, which induced him to doubt its genuineness; and the defendant had adduced no witnesses to prove the execution of the pottah of the 7th Phalgoon 1254; and he accordingly decreed the plaintiff's claim.

In appeal the defendant, Sanund Paltah Singh, urged the same objections as those set forth before the lower court.

#### JUDGMENT.

Although the pottahs filed, respectively, by the plaintiff and defendant, as having been granted to them by Sindhoo Chumputty, have been in a manner proved by the witnesses brought forward by both parties, I think with the moonsiff that the evidence of the defendant's witnesses is unsatisfactory and wanting in perspicuity, for in one part of their evidence they speak of an *ijarah pottah* executed by Sindhoo Chumputty in favor of the defendants, and in another of a *bunduknamah*; and although the *ijarah pottah* and *bunduknamah* are evidently one and the same document, one of the two witnesses to it, stated he was present when the former was executed, but not when the latter was, and neither of them could mention the correct date of the document: one of them having stated it to be the 12th Jyte 1256, and the other having been unable to mention any date at all. Besides this, Sindhoo Chumputty acknowledges the pottah filed by the plaintiff, which bears the prior date, and repudiates that of the defendant. I therefore see no reason to interfere with the moonsiff's decision, which is hereby affirmed, and the appeal dismissed, without serving notice on the respondent.

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THE 12TH MARCH 1851.

No. 75 of 1850.

*Appeal from the decision of Gourbullub Ghose, Acting Moonsiff of Pooree,  
dated 16th September 1850.*

Gungadhur Naik, (Plaintiff,) Appellant,

*versus*

Judoo Dikhit and Kirteebas Teharry, (Defendants,) Respondents.

CLAIM, possession on 3 goonts, 5 biswas of resumed *tunkeean* land in mouza Sreeramchunderpore Sassun, pergunnah Rahung, and the cancelment of a kubala, executed by Kirteebas Teharry, in favor of Judoo Dikhit, on account of the same land on the 10th Kunya 1253, with wasilat and interest. Suit laid at rupees 292-9-11-18 kts.

The plaintiff claimed the land in dispute as part of 2 battees of land, which was mortgaged by Kirteebas Teharry, to the collector of Pooree, as security for the fulfilment of the contract of Lokenath Das, pottahdar of the shops for the sale of ganjah, on account of the years 1845-46 and 1846-47, and for the months of May June and July 1847, and which was sold for the recovery of arrears due from the said pottahdar on the 8th December 1847, at the collector's cutcherry, under Act I. of 1845, and purchased by him. And he contended that as the first of the security bonds, executed by Kirteebas Teharry, was dated the 27th May 1845, and the kubala under which Judoo Dikhit claimed the land as having been purchased by him from the said Kirteebas Teharry, is dated 26th August 1845, and it was recorded in the *bainamah* granted to him by the collector, that the two battees of land mortgaged to Government, which by recent measurement turned out 9 beegahs, 15 goonts, 15 biswas, had been sold to him, he was entitled to the 3 goonts, 5 biswas of land in dispute, which had been alienated by Kirteebas Teharry, after he became security for the pottahdar, and from which security he had never been released. And as Judoo Dikhit had dispossessed him from the land on the grounds of a forged kubala, he sued him and Kirteebas Dikhit for its recovery.

Judoo Dikhit pleaded that he purchased the land in dispute prior to the date of the *zaminmah*, on the grounds of which it had been sold and purchased by the plaintiff; and that he paid the rent of the land to the ameen deputed on the part of Government from 1253 to 1256, the receipts for which were in his possession. He also stated that the canoongoe, who was directed to inquire if the land mortgaged by Kirteebas Teharry was in his possession, reported that he was only in possession of 1 battee, 17 mans, 13 goonts, 12 biswas, or according to present measurement



8 mans, 21 goonts, 3 biswas, out of the 2 battees mortgaged by him.

On the 12th March 1850, or two months after it had been ordered that the case was to be tried *ex parte* as respected Kirteebas Teharry, he filed a juwab, denying having sold the land to Judoo Dikhit, and stated that he was merely a ryot.

The moonsiff held that the purchase by Judoo Dikhit was proved by the witnesses to his kubala, and the fact of his having erected a house on, and paid the rent of the land to the kooruk ameen from 1253 to 1256. And as the said kubala bore a prior date to the *zaminnamah* last executed by Kirteebas Teharry; and it appeared from the canoongoe's report of the 13th June 1847, that the *zamindar* was not in possession of the whole of the land included in the *zaminnamah*, he dismissed the plaintiff's claim.

Against the above decision the plaintiff has appealed, repeating the pleas advanced before the lower court.

#### JUDGMENT.

The material issues of fact arising out of the pleadings in this case are :

*First.*—Whether the security bond executed by Kirteebas Teharry, on the 21st May 1847, had any connection with those previously executed on the 11th June 1845 and 16th April 1846?

*Secondly.*—Whether Kirteebas Teharry had any right to mortgage the land in dispute to the collector on the 21st May 1847, or not?

*Thirdly.*—Whether the collector adopted the necessary precautions to ascertain if the *zamindar* was in possession of the mortgaged land or not, and if he did, what was the result of his inquiry?

Regarding the first point, no allusion whatever is made in the security bond of the 21st May 1847, to the previous securities; it is merely stated therein that Kirteebas Teharry pledged 2 battees of land in mouza Sreeramchunderpore, as security for the ganjah pottahdar, from the 1st May to the 31st July 1847; and therefore the plaintiff's claim must be tried independently of the previous securities.

As relates to the second point, it is clear from the evidence of the witnesses to Judoo Dikhit's kubala, the *poutees* of the kooruk ameen, and the jumma-wasil-bakee accounts called for from the collectorate by the moonsiff, that Judoo Dikhit purchased the disputed land on the 26th September 1845, corresponding with the 10th Assin 1253, and since that time paid rent to the kooruk ameen deputed on the part of Government to collect it; and consequently Kirteebas Teharry had no power to mortgage it on the 21st May 1847.

And thirdly, it appears that the collector ordered the canoongoe to report whether the mortgager was in possession of the land, and

what was its market value, and notwithstanding he on the 13th June 1847, reported that out of the 2 battees of land mortgaged, he was only in possession of 1 battee, 17 mans, 13 goonts, 12 biswas, or according to present measurement 8 mans, 21 goonts, 5 biswas. The collector adopted no measures to ascertain what had become of the rest of the land, neither did he call on the zemindar to furnish other security, consequently the sale by the collector of 9 mans, 15 goonts, 15 biswas, cannot prejudice Judoo Dikhit's purchase or possession, and it is hereby ordered, that the appeal be dismissed, and the order of the moonsiff affirmed, without serving notice on the respondents.

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THE 13TH MARCH 1851.

No. 78 of 1850.

*Appeal from a decision of Moonshee Mahomed Arshud, Moonsiff of Kendraparah, dated the 30th September 1850.*

Cassinath Roy Chowdry, (Defendant,) Appellant,

*versus*

Rajah Pudolab Deo, (Plaintiff,) Respondent.

Musst. Waofee Beebee, zemindar of Putna Meerzanugger, and Ram Jankhan Jamadar and others, (Defendants,) absent in appeal.

CLAIM, possession on 4 beegahs, 20 goonts, 1 biswa of khulsa land, situated in chuck Moondeemal, mouza Murrurpore Putna Goolnugger, in cancelment of the joint magistrate's order of the 8th March 1848, and to have it struck off from the *ruqba* of Putna Meerzanugger, talook Abdoolabad, &c. Suit laid at rupees 118.

The plaintiff stated that the land in dispute since the time of the Moguls and Mahrattas formed part of his zemindarry Putna Goolnuggur, and was engaged for by him at the late settlement; that in 1252 he granted a lease of the Putna to Gungadhur Mungraj, who cultivated it through Basoo Naik and other ryots, and in 1253, when they had sowed their crops, the servants of Cassinath Roy Chowdry destroyed them, and Gungadhur Mungraj on the 26th December 1845, preferred a complaint in the foudjarry court, which was afterwards struck off on his failing to prosecute it; that he, however, remained in possession till 1255, when Ramjan Khan and others, on the part of Cassinath Roy Chowdry, again carried off the crops prepared by his ryots, and Gungadhur Mungraj instituted a suit for possession under Act IV. of 1840, when Cassinath Roy Chowdry filed a petition claiming the land as part of Putna Meerzanugger, talook Abdoolabad, the property of Pitte Punda, on account of whose debts the Putna was sold at auction, and purchased by him for rupees 211; and the joint magistrate, disregarding the settlement records, and the other

evidence adduced by the said Gungadhur Mungraj, dismissed his suit, and as the land had formed part of his zemindarry from time immemorial, and he had been in possession thereof according to the settlement till 1254, and as it had been again measured through the misconduct of the ameen as part of Meerzanugger, he instituted the present suit to establish his right to it.

Cassinath Roy Chowdry denied the plaintiff's right to the land, and stated that it formed part of Putna Meerzanugger, talook Abdoolabad, the property of Pitte Punda, which was sold in execution of a decree of court on the 23rd Assar 1246 U., and purchased by him; and as the land was settled as part of the said Putna under Regulation VII. of 1822, the plaintiff should be nonsuited for not having sued to cancel the settlement proceedings, in conformity with the provisions of Act XIII. of 1848. He also stated that the land in dispute was separated from mouza Bhurrutpore and annexed to Meerzanugger, as the measurement papers would show; and the plaintiff had not only failed to state whence the land was separated and annexed to Murrupore; but there was no *aslee mouza* of the name of Murrupore, &c.

Of the other defendants Kissub Punda only entered appearance, and he denied the plaintiff's claim, and stated Gungadhur Mungraj, the *ijaradar* on the part of the plaintiff, had through enmity charged him with cutting the crops of his ryots.

The moonsiff held that it was clearly proved by the settlement records of Putna Goolnugger, and the *jumma-wasil-bakee* accounts of that property for the year 1241, when it was attached by Government, and the collections were made through the pergunnah canoongoe; and likewise from the fact of Musst. Waofee Beebee, the actual proprietress of Meerzanugger, having failed to defend the suit and the oral and documentary evidence adduced by the plaintiff that the land in dispute, which had been twice measured either by mistake or collusion on the part of the ameen, belonged to Putna Goolnugger, and he accordingly decreed the plaintiff's claim.

The appellant advanced the same objections before this court as those pleaded by him before the moonsiff.

#### JUDGMENT.

Although the appellant contends that the plaintiff should have been nonsuited, because he had not sued to set aside the orders of the revenue authorities, I consider such a plea altogether untenable, as he sued for the possession of the land, which had been settled with him as part of his zemindarry, and stated in the petition of plaint that the defendant (appellant) had dispossessed him therefrom, on the grounds that it had been settled as part of Putna Meerzanugger, of which he was the proprietor; hence it is sufficiently clear that the cancelment of the settlement proceedings of Putna

Meerzanugger, as far as they related to the land in dispute, formed part of his claim, and it is not only manifest from the copy of the settlement proceedings of talook Putna Goolnugger, dated 29th August 1843; that the land in dispute was settled as part of Putna Goolnugger, the property of the plaintiff; but it is equally clear from exhibit, No. 29, being a statement of the names and jummas of the villages appertaining to Putna Goolnugger, and exhibit No. 30 being a statement of the jummas and collections thereof for 1232 U., which were respectively filed in the collectorate on the 26th December 1827 and 11th June 1826; and the statement of the demand, collections and balances for the year 1241, during which Putna Goolnugger was under attachment by Sumbhoonath Rai, canoongoe of the pergunnah, as well as from the local investigation held by the ameen deputed by the lower court, and the evidence taken before the moonsiff that for upwards of eighteen years prior to the settlement, the land in dispute formed part of Putna Goolnugger; and the defendant on the other hand has not adduced a single document to show that the land in dispute ever formed part of Putna Meerzanugger prior to the late settlement, and in exhibit No. 97, being the *jureeb bhoureah*, or measurement papers of 1248, filed by the defendant, the land is represented to be in the possession of Basoo Naik and Shaik Muazim, the latter of whom as well as the son of the former (he being dead) deposed before the moonsiff that the land appertained to Putna Goolnugger. In short, in only one paper filed by the defendant is the land stated to belong to Meerzanugger; in all the others filed by him it is represented to be part of the Hurnawabee lands of talook Abdoolabad, with which the appellant has no concern. I therefore see no reason whatever for interfering with the moonsiff's decision, which is hereby affirmed, and the appeal dismissed, without serving notice on the respondent.

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THE 14TH MARCH 1851.

No. 79 of 1850.

*Appeal from the decision of Moonshee Mahomed Arshud, Moonsiff of Kendraparah, dated 30th September 1850.*

Nurruttun Das, (Defendant,) Appellant,

*versus*

Rai Bykunth Nath Chowdry and others, (Plaintiffs,) Respondents.

CLAIM, rupees 10-11-8, rent of 5 beegahs, 11 goonts, 13 biswas of land in mouza Alailo, on account of 1255 and 1256 U., with interest.

The plaintiff stated that the defendant executed a kubooleut as *thannee* ryot, on account of the above land, at the annual rental of rupees 4-13-3, at the late settlement of his estate in 1244 U., which

was to be in force until its expiration; and that he paid the rent of 1254, and afterwards absconded to mouza Beelpudda, pergunnah Teekun, without paying the rent of 1255 and 1256, and they in consequence instituted the present suit for its recovery.

Nurruttun Das, the defendant, did not enter appearance before the lower court, but his brother Sona Das filed a petition on the 22nd July, representing that the defendant had gone to Calcutta in 1254 to seek his livelihood, and had not since returned; and as he was ignorant of the suit having been instituted against him, the investigation of it according to Construction No. 1343 could not proceed, and the plaintiff should be nonsuited. The moonsiff, however, decided otherwise, quoting as his authority Construction No. 854; and having allowed the vakeel of Sona Das one month's time to procure a vakalutnamah to file an answer on the part of the defendant, he decreed the case *ex parte* in favor of the plaintiff, maintaining that unless the defendant tendered his relinquishment of the land, or was ejected from it by the zemindars, he was bound to pay rent till the expiration of the settlement.

In appeal, the defendant repeats the objection advanced by his brother, in bar of hearing of the case before the moonsiff, and states that, after paying the rent of 1254, he not only tendered his relinquishment of the land, on account of which the plaintiff sued, to their naib; but that he also intimated his having done so by petition to the collector, stating that he did so in consequence of the oppression of the plaintiffs and their naib, &c.

#### JUDGMENT.

It is quite clear from the evidence of the witnesses examined on the part of the appellant's brother, Sona Das, before the moonsiff; that the appellant had proceeded to Calcutta long before the suit was instituted, and that the notice required by Section 11, Regulation II. of 1806, was not served on him, and from the documents in his possession, among which is a copy of his petition to the collector, dated 12th July 1847, corresponding with the 3rd Assar 1254. It appears that in consequence of the oppression of the zemindars and their farmer, he had at that time relinquished the land for which he executed the pottah, and gone to live at mouza Beerpuddah, pergunnah Teekun, and this is corroborated by the petition of plaintiff itself; hence it is manifest that the plaintiffs' claim is false, and the appellant did not cultivate the land in 1255 and 1256 U.; and it is ordered, that the decision of the moonsiff be cancelled, and that the case be remanded to him with directions to receive the defendant's (appellant's) answer, and, after holding proceedings under Section 10, Regulation XXVI. of 1814, to investigate the case *de novo*. The value of the stamp of appeal to be refunded as usual.

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THE 14TH MARCH 1851.

No. 80 of 1850.

*Appeal from the decision of Moonshee Mahomed Arshud, Moonsiff of Kendraparah, dated 30th September 1850.*

Kella Das, (Defendant,) Appellant,

*versus*

Rai Bykunth Nath Chowdry and others, (Plaintiffs,) Respondents.

CLAIM, rupees 30-1-3, rent of 10 beegahs, 16 goonts, 14 biswas of land, in mouza Neamutpore, on account of 1255 and 1256 U., with interest.

The plaintiffs stated that the defendant executed a kubooleut as *thannee* ryot, on account of the land in question, at the annual rental of rupees 13-8-7 from 1244 to the expiration of the settlement in 1274, and paid the rent until 1254 U., and afterwards absconded to Beelpudda, without paying the rent of 1255 and 1256, and they consequently sued him for the same.

Kella Das, the defendant, did not enter appearance before the lower court, but his brother, Bindabun Das, filed a petition on the 22nd July, stating that he had gone to Calcutta in Bhadoon 1255, and had not since returned; and as the notice required by Section 2, Regulation II. of 1806, had not been served on him, the investigation of the case could not, according to Construction No. 1343, proceed in his absence; but the moonsiff ruled it otherwise, quoting as his authority Construction No. 854, and after allowing Bindabun Das's vakeel one month's time to obtain a *vakalutnamah*, and file an answer on the part of the defendant, he decreed the suit *ex parte* in favor of the plaintiff on the same grounds as his decision in the previous suit.

In appeal, the defendant advanced the same objections, as those urged by his brother, in bar of hearing of the case before the moonsiff, and stated that he tendered his resignation of the land in 1254 to the zemindar's naib, and told him to cultivate it through other ryots, &c.

## JUDGMENT.

This case is similar to the preceding, save only that the defendant (appellant) did not present a petition to the collector, tendering his relinquishment of the land, and his reason for not doing so was that Nurruttun Das had been ordered to tender his *istefah* to the zemindar. It is, however, quite clear from the evidence of the witnesses named by the defendant's brother, and the local enquiry held by the ameen deputed by the moonsiff, that the defendant had gone to Calcutta in Bhadoon 1255 U., or 19 months before the institution of the suit, and that the *elamnamah* required by Section 2, Regulation XI. of 1806 was not served on him. It is, therefore, ordered, that the case be remanded to the moonsiff, with orders to receive

the defendant's answer, and after holding proceedings under Section 10, Regulation XXVI. of 1814, defining the issues of the case, to try it *de novo*, and pass proper orders thereon. The value of the stamp of appeal to be refunded as usual.

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THE 27<sup>TH</sup> MARCH 1851.

No. 73 of 1850.

*Appeal from the decision of Sheebpershad Singh, Moonsiff of Cuttack, dated 26th September 1850.*

Ram Naik, (Defendant,) Appellant,

*versus*

Bukht Chowdry, the original plaintiff, and Cumaloo Bhaee, purchaser of the bond, (Plaintiffs,) Respondents.

CLAIM, rupees 163, 12 annas, 3 pie, 4 krants, principal and interest of a bond, dated 12th Dhunoo (Poos) 1251 U., corresponding with the 25th December 1843. Suit instituted 14th April 1849.

The plaint sets forth that Ram Naik, inhabitant of Solumpore, pergunnah Jhajpore, sent his mooktear, Seebchurn Putnaik, to the plaintiff, Bukht Chowdry, to negotiate the loan of rupees 100 for him, and that on the latter consenting to advance the money, Ram Naik appeared at his house at Cuttack on the 12th Poos 1251, and executed the *tumusook* for rupees 100, binding himself to repay it with interest by the following Bysack; and that as he had failed to do so, the plaintiff instituted the present action against him.

On the 11th May 1849, Bukht Chowdry and Cumaloo Bhaee petitioned the court, intimating that Cumaloo Bhaee had purchased the bond.

The defendant denied either sending his mooktear to Bukht Chowdry to treat for the loan, or borrowing any money from him, and stated that he in collusion with Seebchurn Putnaik had forged the bond in his name; but he did not enter appearance until the 24th April 1850, after an order had been passed on the 5th March for the *ex-parte* trial of the case; what the real cause of his non-appearance at an earlier period was, cannot be ascertained, as no enquiry was instituted on the subject; his vakeel merely presented a petition, stating that he had been unwell, and he was directed to file his answer; but it is evident from the circumstances attending the serving of the *elamnamah* and *isteharnamahs*, (of which there were no less than three issued from the court;) that the plaintiff wished to keep the defendant ignorant of the claim he had instituted against him, and to obtain in his absence an *ex-parte* decree.

The moonsiff held that the execution of the bond on the part of the defendant was proved by the evidence of two of the attesting witnesses, and three other persons said to have been present at the time it was written, among whom are Seebchurn Putnaik, the

mooktear referred to in the plaint, and Gopeenath Mhaintee, his nephew, who is alleged to have written the bond; and as the defendant was unable to cause the attendance of certain witnesses, named by him to prove that he was not at Cuttack at the time the bond is dated, he decreed the plaintiffs' claim.

The defendant, in appeal, impugned the testimony of Bulram Sing, one of the two witnesses to the bond, who gave evidence before the moonsiff, on the grounds that he had deposed in the present instance, that he affixed his mark (*a kuttar*) to the bond, and in a former suit, No. 389 of 1846, in which he was defendant, he denied a bond bearing his said mark, and stated that if the document had been genuine it would have borne his signature, as he was able to write, and he contended that, if the plaintiffs' claim against him had been a just one, he would have caused the attendance of Sreebullub Mhaintee, a third witness to the bond, and not have caused his name to be struck off on the plea that he colluded with him; and he would not have sold his claim, which, with interest and costs, amounted to upwards of rupees 179 for rupees 100.

#### JUDGMENT.

After perusing the whole of the records in this case, I have no hesitation in pronouncing the bond to be a forgery, and I am surprised that the moonsiff should have decreed the plaintiffs' claim. In the first place, the stamp paper, on which the bond is engrossed, was sold at Gunputteepore, pergunnah Jhajpore, which is three days' journey from Cuttack, on the 23rd December 1843, to one Chunder Seekur Mhaintee, inhabitant of mouza Kuplisser, which is a mile and a half from Gunputteepore, and it again is about a mile distant from Solumpore, the place where the defendant resides; and, therefore, it is not at all probable that the bond was written on the date specified, viz., the 25th December 1843; neither is it likely that, if the defendant wanted to borrow money at Cuttack, he would bring stamp paper purchased by another person all the way from Jhajpore, when plenty was procurable at Cuttack, or that Chunder Seekur Mhaintee would travel a mile and a half to purchase stamp paper, and part with it again immediately afterwards. *Secondly*, in the third line of the bond, where the name of the defendant Ram Naik now appears, it is evident that some other name has been obliterated, and the word "Ram" substituted in its place. *Thirdly*, the name of Sreebullub Mhaintee, the third witness, has evidently been added to the bond since it was written, for it is cramped up in one corner of the document, and written with different ink to the rest of the bond; and although the plaintiff in the first instance cited the said witnesses to give evidence, he afterwards caused his name to be struck off on the plea that he had colluded with the defendant; and neither does the writing of the defendant's name, attached to the bond, correspond with his signature to the *vakalat*-



*namah* granted by him to his vakeel, nor does the signature attached to the deposition of the witness Dam Dut, correspond with his alleged signature to the bond; but the latter, as well as the name of Bulram Sing, which Seebchurn Putnaik stated was written by Dam Dut, have evidently been written by some other person. *Fourthly*, although the sum claimed with interest amounts to rupees 163-12-3-4, and the stamp on which the plaint is engrossed cost rupees 16 more, the original plaintiff, Bukht Chowdry, is stated to have sold his claim to Cumaloo Bhaee, who is his sister, for rupees 100; therefore, considering the whole of the evidence of the plaintiff's witnesses, and more especially that of Seebchurn Putnaik, the mooktear who is said to have negotiated the loan, altogether untrustworthy and false, I decree the appeal, and reverse the decision of the moonsiff. The respondent will pay the appellant's costs in both courts, with interest to the date of payment.

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THE 28TH MARCH 1851.

No. 3 of 1850.

*Appeal from the decision of Moonshee Gurreeboollah, Sudder Ameen of Balasore, dated 9th September 1850.*

Sheikh Roshun Mahomed and Waris Mahomed, (Defendants,) Appellants,

*versus*

Oordhub Churun Das, (Plaintiff,) Respondent.

CLAIM, rupees 698-3-7, balance of a bond, dated 27th Singh (Bhadoon) 1251, with interest. Suit instituted 15th January 1850.

The plaint sets forth that Roshun Mahomed and his son, Waris Mahomed, borrowed from the plaintiff rupees 492, and executed the bond, which Waris Mahomed signed both for himself and his father, as the latter could not write Ooriah: the conditions of the bond being that the money was to be repaid in three months, and that all payments made were to be recorded on the back of the bond; and that as the defendants had only paid rupees 100 on the 20th March 1849, the present suit was instituted for the recovery of the balance due with interest. It also sets forth that the writer of the bond did not insert in it the defendant's place of residence, as they were persons who were well known and lived at Cusbah, pergunnah Sunhut.

The defendants stated that the claim was false; that they neither borrowed the money nor executed the bond; that if they had done so, they would have attested it in the character with which they were cognizant, and not in Ooriah; that they always signed their names, Roshun Mahomed in Nagri, and Waris Mahomed in Persian, and had several bonds, which had been liquidated in

their possession, which would prove the fact of their doing so; that at the time they were said to have executed the bond in favor of the plaintiff, Roshun Mahomed was at Lukhamath, and Waris Mahomed at Cuttack, where he filed a petition of appeal, attested by him in Persian, in the suit of Nunna Beebee; that they both previously executed bonds in favor of the plaintiff and his partner Anoopram Mhaintee, which were signed by them in Persian and Nagri, and, if the plaintiff's claim had been a genuine one, their place of residence would have been recorded in the bond. They also asserted that the plaintiff instituted the present false suit against them, because Roshun Mahomed had in execution of a decree against one Dyaneedhee Mhaintee, caused a 6 pic kismut of mouza Sankoorree to be sold and purchased by his nephew Lal Mahomed for rupees 206, when the plaintiff wished to purchase it, and through his mooktear bid rupees 205.

The sudder ameen held that the execution of the bond by the defendants was proved by the three attesting witnesses, and the fact of the defendants' having been desirous of entering into an arrangement for the payment of the amount of it, as deposed to by certain other witnesses; and, rejecting all the arguments and proofs adduced by the defendants, on the grounds that they were irrelevant and fraudulent, he decreed the claim.

The defendants, in appeal, reiterate the pleas urged by them before the lower court, and complain of the general rejection by the sudder ameen of all the proofs adduced by them in support of their statement, pointing out that his arguments are conjectural and unsupported by the facts of the case.

#### JUDGMENT.

There cannot exist the slightest doubt that the bond filed by the plaintiff (respondent) is a forgery; and that the sudder ameen should, under the circumstances of the case, have decreed the plaintiff's claim, is, in my opinion, by no means creditable to his judgment.

In the first place, the stamp paper, on which the bond is written, was purchased in the town of Midnapore, which is five days' journey from Balasore, upwards of five months prior to the date of the bond, by one Pursooram Dey; though both the lender and borrowers of the money are residents of the town of Balasore, where stamp paper to any amount is always procurable; and, notwithstanding the respondent states that his partner has a shop at Dantoon, in the Midnapore district, and that they are in the habit of executing bonds written at Balasore, on stamp paper purchased at Midnapore, and *vice versa*. It is most improbable that such is the case, otherwise they would have adduced proof of the fact: and it is well known that the borrowers of money are in the habit of furnishing the stamp paper on which the bonds are written, and that on which

the present bond is engrossed, was neither purchased by the defendants nor the plaintiff.

*Secondly.*—The defendants filed seven bonds, (originals and copies,) as well as other documents, which fully prove that neither of them ever signed their names in Ooriah; but that Roshun Mahomed signed in the Nagri, and Waris Mahomed in the Persian characters, both prior and subsequently to the date of the bond filed by the plaintiff; and among the said bonds is one, exhibit No. 56, executed on the 16th Assin 1250, by Roshun Mahomed in favor of the plaintiff, Oordhub Churn Doss, and his partner Anoopram Mhaintee, for the sum of rupees 200, which is attested by Roshun Mahomed through his son, Waris Mahomed, in the Persian character, and this is evidently the bond alluded to in the plaintiff's *juwab-ul-juwab*, or answer to the defendants' reply, as having been executed by Roshun Mahomed in 1250, though he therein asserted that that bond was signed by Roshun Mahomed in Ooriah. And although it does not appear when that bond was liquidated in full and returned to the defendants, it is manifest, from an endorsement on the back of it of the payment of rupees 100, on the 29th Phalgun 1252, that only half of the amount borrowed under the said bond had been repaid six months after the date of the bond filed in the present suit; hence it is not only clear that the defendants could not have signed their names in Ooriah, instead of in Persian, with the view to defraud the plaintiff at a future time; but it is not at all likely that the plaintiff would have lent them the further large sum of rupees 492 before the previous debt had been repaid; moreover, the plaintiff has not adduced a single document to show that either of the defendants ever signed their names in Ooriah, nor did he produce his accounts to prove his claim, as he naturally would have done, had it been a just one.

*Thirdly.*—I consider that the evidence of the defendants' witnesses regarding the plaintiff's having asked Roshun Mahomed to stay the sale of the 6 pie share of mouza Sankooree, and the facts of Muddun Mohun Mahapater having bid rupees 205 for it, and its having been bought by Lal Mahomed, the nephew of Roshun Mahomed, for rupees 206, backed as they are by copies of two *mooktearnamahs*, exhibits Nos. 117 and 121, granted by the plaintiff to the said Muddun Mohun Mahapater, (this is also the person who wrote the bond filed by the plaintiff,) to execute a *kubooleet* and cause the *dakhil-kharij* on his behalf of certain other portions of mouza Sankooree, fully bear out the defendants' assertion, touching the cause of the plaintiff's having forged the bond in their names.

*Fourthly.*—The evidence of the three witnesses to the bond is altogether untrustworthy, for they are all peadahs in the service of the plaintiff, and are unable even to write their names; and it is

quite incredible that the plaintiff would lend so large a sum as rupees 492, on the testimony of such ignorant persons, when there were hundreds of persons who could read and write, living in the immediate neighbourhood where the bond was written; and the sudder ameen has not, in my opinion, adduced a single valid reason for mistrusting the voluminous proofs brought by the defendants; on the contrary his arguments are most illogical, and not only is the reason assigned by him for not recording the deposition of Ram Kishore Dey, whom the defendants produced to certify the genuineness of the bonds, exhibits Nos. 57 and 59, filed by him, invalid and inadmissible; but he omitted to ask Radha Sham Das, the witness who was cited to give similar testimony regarding the two bonds, exhibits Nos. 61 and 64, any questions that were likely to elucidate the facts of the case. It is, therefore, ordered, that the appeal be decreed, and that the decision of the sudder ameen be reversed. The respondent will pay the appellants' costs in both courts, with interest to the date of realization.

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THE 28TH MARCH 1851.

No. 4 of 1850.

*Appeal from the decision of Moonshee Gurreeboollah, Sudder Ameen of Bularore, dated 13th September 1850.*

Gopeenath Paneegrahee, (Defendant,) Appellant,

*versus*

Musst. Soolochunna, mother and guardian of Sheeb Narain Das, son of Ram Narain Das, deceased, (Plaintiff,) Respondent.

CLAIM, rupees 465, principal and interest of a *tumusook*, dated 18th Mithun (Assar) 1252 U.

The plaintiff stated that the defendant borrowed the sum of 300 rupees on the above date from her husband Ram Narain Das, and executed the bond, and as he had repaid no part of it, she sued for the amount, with interest, on the part of her son.

The defendant denied the claim *in toto*, and stated that the plaintiff had been instigated by certain parties with whom he was at enmity to forge the bond in his name, and that her husband would not have advanced the large sum of rupees 300 to him without security.

The sudder ameen held that the execution of the bond, and the borrowing of the money on the part of the defendant, was satisfactorily established by the evidence of five witnesses, and accordingly decreed the plaintiff's claim.

Against the above decision the defendant appealed, pointing out that only one out of the three witnesses to the bond had been adduced to give evidence, and that his testimony, as well as that of the

writer of the bond, and three *hazir mujlis* witnesses, all of whom were dependents of the plaintiff's husband, was altogether contradictory, and failed in establishing the principal issues of the case.

#### JUDGMENT.

There is not a particle of proof to support this claim.

The bond was to have been satisfied in the month of Aughun 1253, and the plaintiff's husband did not die till Aughun 1256, and the suit was not instituted till the 19th Maugh 1257; and out of the three persons whose names are attached to the bond as witnesses to its execution one is dead, another was not produced by the plaintiff on the plea of his having colluded with the defendant, and the evidence of the third, Goburdhun Kumila, is altogether insufficient to establish the claim. His house is three coss distant from the plaintiffs, and he was unable to state who, besides himself, witnessed the bond, and he did not see the defendant receive the money, but left the plaintiff's house before it was delivered to him; and although he stated that he could only write with the *likhun*, or iron pen, and not with a *kullum*, or reed, and that Oomakaunth Panee, the writer of the bond, wrote his name, he attested his deposition taken before the sudder ameen in a very legible hand with a *kullum*; and although the said Oomakunth Panee, the writer of the bond, deposed that he was an *oomedwar* of the plaintiff's husband, Ram Narain Das, and that he went to his house and wrote the bond at his telling at about 11 o'clock at night; he could not recollect whether he wrote the name of the aforesaid Goburdhun Kumila or not; he also stated that out of the 300 rupees, for which the bond was executed, the defendant only carried away with him 200 rupees, and that he repaid the other 100 rupees to the plaintiff's husband in liquidation of some prior bonds; but of this fact no mention is made in the bond, nor in the evidence of Goburdhun Kumila; and I not only consider the evidence of the two foregoing witnesses, as well as that of the three others, servants of the plaintiff, who are said to have been present at the time the bond was written, and who depose that Jugoo Das wrote his own name, though it is evidently written by the person who wrote the names of the other witnesses, most unsatisfactory; but I am totally unable to discern under what circumstances the sudder ameen considered the claim satisfactorily proved.

It is therefore, ordered, that the appeal be decreed, and the decision of the lower court reversed. The respondent, who did not appear, though duly served with notice to do so, will pay the appellant's costs in both courts, with interest to the date of payment.

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THE 31ST MARCH 1851.

No. 72 of 1850.

*Appeal from the decision of Mohesh Chunder Roy, Moonsiff of Dhamnugger, dated 14th September 1850.*

Nissakur Dukhin Kobat, (Defendant,) Appellant,

*versus*

Bindabhun Dhul, (Plaintiff,) Respondent.

CLAIM, rupees 10-15-3-8, rent of 1 beegah, 3 goonts, 3 biswas of land in mouza Buneapal, on account of 1252, 1253 and 1254, with interest. Suit instituted 7th Sawun 1256 U.

This suit was remanded to the moonsiff for re-investigation on the 7th March 1850, it having been decided *ex parte* in favor of the plaintiff, and the defendant having represented in appeal that he lived at Tajpore, and not at Mhainda, where the *ishteharnamah* was published.

The plaintiff stated that the defendant cultivated the land, the rent of which he claimed from 1252 to 1254 at the annual rental of rupees 3-13-5, but only paid rupees 3-1-5 in 1252, leaving a balance of 12 annas on account of that year, and the whole of the rent of 1253 and 1254 still due.

The defendant denied the claim, and stated that he had paid no rent at all to the plaintiff, and that as he lived at Tajpore, and not at Mhainda, as represented by the plaintiff, his claim should be nonsuited; he also pleaded that if he had cultivated the land, the plaintiff would have held his *kuboolcut*, and he would have annually sued him for the rent through the canoongoe, and not have delayed to prefer his claim for three years.

The moonsiff held that the fact of the defendant having cultivated the land was proved by the plaintiff's witnesses, and, as the defendant adduced no proof to the contrary, and merely pleaded that the case should be nonsuited, he decreed the claim.

Against the above decision the defendant has again appealed, repeating the objections urged by him before the lower court.

#### JUDGMENT.

Although it is clear from the documents filed by the defendants, that the name of the village in which he resides is recorded in the settlement papers of 1840 as Tajpore, the plaintiff's witnesses deposed that it was known, and went by the name of Mhainda in the mofussil, and therefore I do not see sufficient cause to nonsuit the plaintiff. The question for decision is, did the defendant cultivate the land during the years the rent of which is claimed? and this, in my opinion, is by no means satisfactorily proved, no *pottah* or *kuboolcut* was interchanged between the parties, and the suit was not instituted until four years after the balance alleged

to be due on account of 1252 became due, and not, according to the plaintiff's own witnesses until two years ; one witness says two or three years after the defendants ceased to cultivate the land, and the only accounts the plaintiff has brought forward to prove his claim, are three *talputro beans* for 1252, 1253 and 1254 U., none of which was filed in the canoongoe's office until seven days before the suit was instituted, though the zemindars are required to file these accounts annually. It is, therefore, to be inferred that these accounts were merely prepared for the purpose of being filed in the present suit, and it is hereby ordered, that the appeal be decreed, and that the decision of the moonsiff be reversed. The respondent will pay the appellant's costs, with interest in both courts.

## ZILLAH JESSORE.

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PRESENT : C. STEER, ESQ., OFFICIATING JUDGE.

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THE 3RD MARCH 1851.

No. 161 of 1850.

*Appeal against the decision of Moonshee Golum Abad, Moonsiff of Tirmohnee, dated 21st May 1850.*

Chundee Churn Shah and Gopeenath Shah, (Defendants),  
Appellants,

*versus*

Ramcomar Dalal, (Plaintiff,) and Ramtonoo Mookerjee, (Defendant),  
Respondents.

SUIT to obtain possession of a share of a gatee jumma and lakhiraj mehal, together with wasilat by the reversal of an award under Act IV. of 1840.

The plaint sets forth that the gatee jumma and the lakhiraj mehal are ancestral property belonging to the plaintiff, to Ram Dhun, and three others. On a sale under a decree the right of Ram Dhun in the property was sold to Chundee Churn, the defendant, and another, who proceeding at once to oust the plaintiff and Ram Dhun's other sharers, they made a complaint under Act IV. of 1840 to the magistrate; but that authority gave the case in favor of the purchasers, and the plaintiff now brings this action to set aside that award, and to recover possession of his share.

Chundee Churn and Gopeenath Shah reply that the gatee and the lakhiraj were exclusively the property of Ram Dhun; that they can prove it by many written documents, and that one of the partners in the zemindaree, in which the gatee lies, gave a kyfeut in a former case that Ram Dhun was sole proprietor of the said property, and that he alone discharged the rents.

Those of the defendants, who are partners with the plaintiff in the property in dispute, support his statement, the other defendants reply in favor of the purchasers.

The moonsiff decreed the case in favor of the plaintiff on the most substantial proof, that the gatee and the lakhiraj were ancestral property, and that the plaintiff had clearly a share in the same.

The defendants, Chundee Churn and Gopeenath Shah, appeal against this decision. Their appeal, however, contains nothing



which was not advanced in the answer, and which was not duly and fully considered by the lower court. The arguments advanced in the appeal are only so many strictures and cavils against the conclusions arrived at by the lower court. As to refutation there is none. Indeed, it is impossible for the appellant to controvert the grand fact of the plaintiff's right and title, based as they are not on materials of yesterday, but on written proof of several years back. On these as well as on the oral testimony to the same effect the lower court has decreed the claim, and as nothing has been urged sufficient to impugn the justness of that decision, I confirm it, and dismiss this appeal, with costs.

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THE 3RD MARCH 1851.

No. 163 of 1850.

*Appeal against the decision of Moonshee Golam Abud, Moonsiff of Tirmohnee, dated 21st May 1850.*

Chundee Churn Shah and Gopeenath Shah, (Defendants,) Appellants,

*versus*

Bindabolee Dassea, (Plaintiff,) and Ramtonoo Mookerjee, (Defendant,) Respondents.

THIS suit is similar to the last both in the object of it and the property in dispute. The plaintiff, as in the last case, sues to recover his share from which he has been dispossessed by the same party and in the same manner as in the other suit. The pleadings are the same and the moonsiff's decision the same. It is sufficient, therefore, to record that the appeal is dismissed, with costs on the grounds given in my judgment in the foregoing suit, a copy of which will be placed with the record of this case.

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THE 4TH MARCH 1851.

No. 155 of 1850.

*Appeal against the decision of Baboo Doorgapersaud Roy, Moonsiff of Noabad, dated 10th May 1850.*

Hurnath Dut, Appellant in the suit of Ishore Chunder Potdar, (Plaintiff,) Respondent,

*versus*

The Appellant, Fuckeer Chand, and Poona Dibbea, wife of Petumber Roy, deceased, (Defendants.)

THE plaintiff sues to recover the sum of rupees 190 paid to the defendant Hurnath Dut, for his interest in a deed of mortgage, executed by the two other defendants, Fuckeer and Petumber

Roy, in consideration of a loan made to them by the said Hurnath. The mortgage was already foreclosed before the plaintiff's purchase, and he was about to take steps to render the sale absolute, when he learnt that the mortgagees had no right in the property mortgaged. Under these circumstances the plaintiff sues Hurnath for the recovery of the sum paid to him for his interest in the mortgage, and the mortgagors are also made defendants, in case exception should be taken if they were not made parties to the suit.

Hurnath Dut, together with other pleas, denies his liability, and claims complete exemption from this suit and all its consequences, of which he asserts the plaintiff relieved him when he purchased his interest in the mortgage.

The moonsiff decreed the case against Hurnath alone. He quotes as his precedent the Construction No. 898, which allows that the mortgage money may be sued for on cause shown instead of for possession of the property pledged.

The defendant Hurnath appeals against this judgment.

#### JUDGMENT.

Hurnath pleads very justly that he was relieved of all concern in the matter of the mortgage when the plaintiff bought his right in it from him. He cannot under any circumstances be held liable for the refund of the money. The transaction between him and the plaintiff was one of simple sale. If Hurnath has made a good bargain, so much the better for him, if the plaintiff has made a bad one, he must still abide by it, he has no right to expect that the court will cancel it. The order of the lower court is on these grounds reversed, and Hurnath's appeal decreed, with costs.

The plaintiff being in the place of the former mortgagee, is at liberty to sue the mortgagors for the money due on their bond, or for possession of the property pledged at his option. Nothing contained in this decree is meant to be a bar to such suit. It will be observed that the plaintiff has not sued on the mortgage bond, but upon the deed of sale of it by Hurnath, to which latter transaction Fuckeer Chand and Petumber Roy were in no way parties concerned, they ought not, therefore, to have been made co-defendants with Hurnath.

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THE 4TH MARCH 1851.

No. 157 of 1850.

*Appeal against the decision of Moulvee Syed Ahmud, first grade  
Moonsiff of Mahomedpore, dated 15th May 1850.*

Kalleesunkur Chunder, (Plaintiff,) Appellant,  
*versus*

Zuheeruddy and others, (Defendants,) Respondents.

THE plaintiff sues to recover the sum of rupees 27-2, as balance of rent due from the defendants, his under tenants, from 1249 to 1255 B. S.

The defendants made no appearance, and though the plaintiff filed an account proved to have been drawn up and signed by the defendants, as well as his kubooleut and a jumma-wasil-bakee as evidence of the arrear, the moonsiff dismissed the suit, on the ground that in the plaint, the plaintiff's own jumma was said to be in one pergunnah, while by the evidence of one of his witnesses it seemed to be contained in two.

## JUDGMENT.

The account, the jumma-wasil-bakee, the kubooleut and oral evidence were, one and all, given in this case, and the defendants were absent, having nothing to say in their own defence, yet the lower court, on grounds quite foreign to the question at issue and quite gratuitously, rejects the suit; that the defendants were the plaintiff's ryots, their kubooleut, proved by witnesses, satisfactorily shows that they were in arrears as is clearly established by the account attested by the defendants themselves, and by the jumma-wasil-bakee, what more was necessary?

I reverse the order of the lower court, and decree the appeal, with costs against the defendants, who have failed to make any appearance also in this court.

THE 6TH MARCH 1851.

No. 170 of 1850.

*Appeal against the decision of Moulvee Muckbool Ahmud, Moonsiff of  
Talah, dated 29th May 1850.*

Taramonee Dassea, (Defendant,) Appellant,  
*versus*

Neelmonee Bose, (Plaintiff,) Respondent.

THE plaintiff sues the defendant as widow of, and successor to Loknath Roy, for the amount of a bond executed by the latter in Maugh 1247, for 100 rupees, principal, and 100 rupees, interest.

The defendant, who did not appear till more than eight and half months after the institution of the suit, denied that her late

husband had ever executed such a bond. She pleaded that the bond itself acknowledged cash, whereas in the plaint it is alleged that a bank note was paid. Further, that the stamp paper on which the bond is written was purchased by a stranger; that the evidence was contradictory, inasmuch as one witness deposed that Loknath himself wrote the bond, while another witness affirmed that one Ishore wrote it.

The moonsiff thought the bond proved, he did not consider that it was any contradiction that cash was acknowledged to have been received, while the plaint said that a bank note was paid, for a bank note is nothing more or less than cash; that as to the discrepancy in the evidence in regard to the person who wrote the bond, three witnesses were quite agreed on that point, and that although another witness did depose to something differently, his obliviousness could not invalidate the uniform evidence of the other witnesses. On these grounds the moonsiff decreed the suit in favor of the plaintiff.

The defendant appeals. She urges the same pleas as were advanced in her answer, which have all been met and overruled in the judgment of the lower court. The appeal, however, further urges that the evidence of two (query one) of the witnesses of the plaintiff was taken by the mohafiz of the moonsiff's court in the absence of any person on the part of the defendant, and that a person was examined to prove the bond who was not mentioned as a witness in the original list given in by the plaintiff.

#### JUDGMENT.

In the list of witnesses first given in by the plaintiff, five names were mentioned; of these, two were not to be met with, one was ill, and two appeared to give evidence before the moonsiff. The plaintiff finding that the parties first named were not likely to be made to appear of his own accord brought another witness to the moonsiff's court, and petitioned that his deposition might be taken, and a commission (though not quite in the prescribed form) was given by the moonsiff to his mohafiz to take the evidence of the sick man at his house, at which time and place the appellant might have had an agent present, if she chose. In this I find nothing illegal or objectionable, and as all the other pleas advanced in the answer were fully considered by the lower court, in the judgment of which I quite concur, I dismiss this appeal, with costs.

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THE 7TH MARCH 1851.

No. 69 of 1850.

*Appeal against the decision of Moulvee Muckbool Ahmud, Moonsiff of Talah, dated 22nd January 1850.*

Matunghee Dibbea, Claimant, Appellant in the suit of Teeluk Chunder Chuckerbuttee, Plaintiff,

*versus*

Bindoo Monie and Moodoo Sudun, Defendants.

THE plaintiff sues to recover possession of 8 cottahs out of 16 beegahs, 12 cottahs of lakhiraj land, sold to him by Ram Dhun Chuckerbuttee, the late husband of Bindoo Monie, the defendant, and from which she has dispossessed him.

Bindoo Monie acknowledges the sale by her late husband, but pleads that the 8 cottahs sued for was not included in the plaintiff's purchase.

Matunghee Dibbea comes forward and denies that her father Ram Dhun Chuckerbuttee ever sold the land in question; that she is sole heiress to her father's property, and that the alleged sale is a fraud from beginning to end between Bindoo Monie and the plaintiff to rob her of her patrimony.

From the evidence adduced by the plaintiff, the moonsiff regarded the sale as proved, and inasmuch as Bindoo Monie had failed to deposit the ameen's fees in order that her claim to the 8 cottahs might be locally investigated, he gave the plaintiff a decree in his favor.

The claimant appeals, reiterating her assertion that the sale was false, also that the plaintiff and defendant were in collusion, and that the said lakhiraj land was in her father's possession after the date of its alleged sale, and remained so up to his death.

#### JUDGMENT.

The parties in this suit not being at issue on the point of sale, the truth or falsehood of that transaction ought not to have been pronounced upon. The question, which the moonsiff had to decide, was, whether the sale being admitted as between the parties, the 8 cottahs in the suit was part of, or exclusive of, the land included in such sale? The evidence on the part of the plaintiff showed that it was included in his alleged purchase, which not being refuted by the defendant, a decree could have been passed without any judicial opinion being given as regards the sale, its validity or otherwise. This point, if it was necessary to go into it, could not be legally adjudicated except in the presence of Matunghee, the claimant, who, as undoubted heiress of her father, had her interest directly

at stake in the decision of such a question. The lower court was, therefore, wrong in entering upon that question, and still more so in pronouncing the sale good and valid, when Matunghee, whose right and interest were put in jeopardy, was not made a party to the suit. So much, therefore, of the lower court's order, which relates to the question of the truth or falsehood of the sale is hereby cancelled. Matunghee must bear her own costs.

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THE 10TH MARCH 1851.

No. 164 of 1850.

*Appeal against the decision of Moulvee Syed Ahmud, Moonsiff of Mahomedpore, dated 15th May 1850.*

Kummeeruddee Khan and Sultan Khan, (Plaintiffs,) Appellants,

*versus*

Kalah Khan and others, (Defendants,) Respondents.

THE plaint sets forth that the two plaintiffs hold, in conjunction with certain other parties, a one-third share in a talook called Seer-gong Rohootgatee, pergunnah Latoor. Of this one-third share, the plaintiffs are maliks of 4 annas, 5 gundahs, 1 cowrec, 2 krants, and the heirs of Bolah Khan and others are maliks of the other 1 anna, 1 gunda, 1 cowree, part of the lands is held in joint and undivided possession, and of part there has been a private partition between the sharers—appertaining to this latter portion is an accretion of some beegahs made by the formation of new land by a change in the river, of which the plaintiffs were in possession for several years after its formation, but in 1249 the defendants dispossessed them, and the plaintiffs therefore sue for its recovery.

The defendants answer that in 1249 Kutbanu, the widow and successor of Balah Khan, gave them a pottah of the land in dispute, which belongs to her, and that they obtained possession without demur or opposition from any quarter. They plead further that the suit cannot be heard in the absence of Kutbanu.

The plaintiffs, in their replication, state that they have suffered no wrong at Kutbanu's hands, that they should make her a defendant.

The moonsiff dismissed the suit as the plaintiffs were unable to give any proof that the land belonged to them, and the defendants, it appeared, had been in possession from its formation.

#### JUDGMENT.

The moonsiff, in his judgment, remarks that the point for consideration is, to whom does the land belong? that is, does it belong to the share of the plaintiffs or to that of Balah Khan? Thus a ques-

tion is put in issue directly affecting the interest of a party who is not arrayed in the suit ! Notwithstanding this, the moonsiff proceeds to try the question on its merits. The consequence of his decision is that a party is virtually declared the owner of land to which he has laid no claim, and a question of proprietary right is determined in absence of one of the proprietors.

The appeal is dismissed, and the plaintiffs nonsuited, with all costs.

## ZILLAH MIDNAPORE.

PRESENT : W. LUKE, ESQ., JUDGE.

THE 3RD MARCH 1851.

No. 218.

*Appeal from a decision of the Sudder Ameen, Baboo Taruck Chunder Ghose, dated 29th July 1851.*

Rajbullub Roy, (Plaintiff,) Appellant,

*versus*

Sreeram Roy and others, (Defendants,) Respondents.

THE plaintiff sues for a bond debt, laid at Company's rupees 682-9-2 $\frac{3}{4}$ .

The defendant denies the claim, and pleads that plaintiff's circumstances are not such as to enable him to grant such a loan; that he is compelled by poverty to live with his father-in-law; that plaintiff and he are at feud, and the former has instituted this suit to gratify revenge.

The sudder ameen observes that plaintiff fails to prove that any valuable consideration was given in lieu of the bond, and that none of the witnesses attesting the latter, can throw any light on the subject. On the contrary they declare ignorance of what they are called on to establish; that the testimony of other witnesses, whom plaintiff cited, is confictory and contradictory of the averments set forth in the plaint and replication, and that the probabilities arising out of the records of the case are strongly against the truth of plaintiff's claim.

In appeal, the plaintiff demurs to the arguments of the lower court, and pleads that the witnesses who attested the bond colluded with the defendant Sreeram, which left him no alternative but to cite other witnesses to prove the loan and the execution of the bond. There are other considerations besides those stated by the sudder ameen, which lead me to think that the bond is a fabrication. The stamp paper, on which the deed is engrossed, is endorsed to a third person, having no connection either with plaintiff or defendant, residing five or six coss from the residence of either party, and two months prior to the date of the bond, from the appearance of the latter it has evidently been recently written after the paper had been soiled and creased, and in a way to avoid the creases caused by folding of the paper, which are evidently of some standing.



I see therefore no reason to disturb the decision of the lower court, which is hereby affirmed, without serving a notice on respondent.

THE 3RD MARCH 1851.

No. 126.

*Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq., dated 19th March 1850.*

Sadick Aleo Khan, (Defendant,) Appellant,

*versus*

Kishennath Karock, (Plaintiff,) Respondent.

THIS is an action to recover possession of 109 beegahs, 13 cottahs of land in mouza Esaipore, laid at Company's rupees 2043-9-6.

The plaintiff states his father obtained a lease of the land aforesaid from the rajah in his uncle's name in the year 1212 Umlee, and the year following got a new lease in his (plaintiff's) name; that possession has continued with his father and himself without interruption till 1253 Umlee, when the defendant, Busteenarain Bunnia, ousted him and re-let the said lands to the other defendants.

The defendants, Chand Moolat and others, plead, in reply, that plaintiff's father never had possession; but that his uncle, Debee Churn Karock, obtained a lease of it from the rajah in 1212 Umlee, which he retained till 1216, and in the mean time gave them (defendants) a bhaug lease. In 1217 the plaintiff's brother, Ramnarain Karock, took a lease of the land and sublet several parcels of it to Mirza Golam Beg and others, and that they or their descendants are still in possession.

The principal sudder ameen considers plaintiff has clearly established his title, and that he was ousted forcibly by defendants in regard to the zemindar who was made a party to the suit. He observes "the zemindar's answer filed at the time of trial is deserving of no consideration, however *en passant*, we give it as our opinion that he is not entitled to take advantage of Act I. of 1845, as he is not an auction purchaser; but even admitting the contrary, his position is not bettered, for plaintiff is a *kudumee* ryot and a *mokururedar* to cancel the lease of such a one the law gives no power, *ergo* we give a verdict in plaintiff's favor."

From this award the zemindar appeals and demurs to the judgment of the lower court as calculated to prejudice his interests in regard to an issue not before the court.

The point for adjudication is the fact of possession, and there can be no doubt the plaintiff was in possession till violently ousted by the defendants. It was unnecessary for the principal sudder ameen to offer any opinion on the zemindar's rights, and his power to exercise them under Act I. of 1845, as it was extrajudicial, and

calculated to prejudice the zemindar's claims, should he see fit in the usual way to dispute the plaintiff's title. I see no reason, however, to interfere with the verdict of the lower court, which is affirmed. The appellant paying all costs in this court.

THE 8TH MARCH 1851.

No. 198.

*Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq., dated 14th July 1849.*

Ranee Kistoprea, mother and guardian of Rajakisto Indernarain  
Doss Mahapatur, (Defendant,) Appellant,

*versus*

Juggernath Doss, after his death, Simbhoonarain Doss, (Plaintiff,) Respondent.

THIS is an action to recover possession of 452-18-3 of land, lying and being in mouzas Bhoymool and Arung Dhekia, pergunnah Baleye, laid at Company's rupees 977.

The plaint sets forth that the defendant (appellant) in the year 1245 removed a boundary line, called Mudhoosooden's *Naiabund*, and erected another some distance east of the former, forcibly dispossessed plaintiff of the lands lying between them, belonging to his estate Bhoymool, and annexed the said lands to Berah Khana, defendant's property. The defendant denies plaintiff's right, and pleads possession in virtue of a deed of arbitration, executed on 27th Jyte 1176, awarding the said lands as part and parcel of Berah Khana.

The principal sudder ameen observes: "Both parties agree that the boundaries of their estates were settled by arbitration so far back as 1176 Umlee, therefore, the only point for consideration is, whether the lands now claimed lie within the boundaries of "Bhoymool," or those of "Berah Khana," according to the solanamah founded on the arbitration award, and "acknowledged by the parties to this action?"

The principal sudder ameen then goes on to observe "On comparing the boundaries of the lands detailed in the plaint with those described as belonging to Bhoymool in the said solanamah, we find them to be one and the same, and also that the ameen, deputed by the former principal sudder ameen, reports that the disputed lands form part and parcel of Bhoymool, and further that defendant's husband in the year aforesaid removed plaintiff's landmark, *i. e.*, the bund made by his father, and entered on the lands now claimed and kept possession ever since. The forcible dispossession is also fully proved by the depositions of witnesses taken by the first ameen deputed to make a local inquiry, and though we discredit them, because some of the deponents could not correctly describe the boundaries of Bhoymool, yet we see no

cause for doing so, particularly as the other side could have confronted them with counter evidence. Since then it is satisfactorily proved that the lands, viz., beegahs 446-14-2 podkas, lying in dag 2, form part of mouza Bhooymool, plaintiff's estate, and that they are now in defendant's possession. We decree possession to plaintiff, with costs."

In appeal, the defendant demurs to the decision of the lower court as opposed to evidence and facts, as recorded in the proceedings. The issues are, first, whether the lands in dispute belong to the estate of Bhooymool or that of Berah Khana, and secondly, whether plaintiff has been dispossessed of them. On the first issue, the plaintiff has adduced no evidence whatever. Both parties admit the existence of mouza Bhooymool; but it is not recorded on the rent roll of the district, nor is there proof of its extent. In clauses 13 and 19, of the arbitration deed of Jyte 1196, which both parties admit to be good and valid, the boundaries of the disputed ground are clearly laid down. These correspond with a map of the land aforesaid, drawn on the spot on the 20th December 1845, by an ameen deputed for the purpose. The correctness of which both parties have certified by their signatures. In the arbitration deed and map, the boundaries between the two estates Bhooymool and Berah Khana is Mudhoosooden's *Naiabund*, according to the map this bund is in existence.

The plaintiff, however, pleads that in the year 1245=1838, the defendant removed the original bund and erected another further east, thereby usurping 446-14-2 of the Bhooymool lands. If this allegation were founded on fact, it appears extraordinary that plaintiff, when he prosecuted the defendant in the foudjdarce court for possession, should have omitted all allusion to the removal of one bund and the erection of another. He then stated his dispossession to have been caused by defendant's interference with the ryots. Had the bund been destroyed and another made, as he now sets forth in his plaint, it is beyond probability he would have failed to bring to the magistrate's notice such an important feature in the case, which, if true, would have been a strong argument in favor of his claim. Beyond the statement of plaintiff and that of his witnesses, there is no evidence that Mudhoosooden's *Naiabund* was ever destroyed. On the contrary the presumption is that the bund now in existence is the same bund as alluded to in clauses 13 and 19, of the arbitration deed and the ameen's map; and, assuming such to be the case, there can be no question, I think, that the lands belong to mouza Berah Khana. In a suit of this nature possession is <sup>9</sup>/<sub>10</sub>ths of the law. In 1839 the magistrate upheld defendant's possession on the ground, it may be presumed, that he was in possession before the dispute arose. Plaintiff's right to possession must rest on the strength of his title to possession; but he has failed to show that he has any, and,

accordingly, I cannot agree in the verdict the lower court has given. It is accordingly set aside, and the appeal decreed.

THE 5TH MARCH 1851.

No. 25.

*Original Suit.*

Srinath Mittre and others, Plaintiffs,

*versus*

Srimutty Digumburee and others, Defendants.

THE plaintiff sues to recover from defendants the right, title and interest in a decree, amounting to 2 annas, 8 gundahs, as lawful heirs of the said person deceased, and also Company's rupees 321-13-6, received by her as next of kin, with interest.

The defendants plead that this action is bad, because the judgment debtor ought to have been made a party; that she has possession of 3 annas, 4 gundahs interest in the late Peary Mohun's landed property, which has not been included in the present plaint, and that consequently the suit is barred by the Sudder Court's construction of the law as laid down in a circular letter, 11th January, 1839.

In reply the plaintiff denies that defendant is in possession of the landed property aforesaid, and that the action can lie and is consistent with the law. The defendant has proved to the court by a decision of the collector, dated 24th December 1850, a copy of which he has filed that defendant is in possession of Peary Mohun's landed property. Before, therefore, entering on the issues of fact, it is necessary to decide whether the action as now laid is opposed to law. The present claim is founded on right of inheritance, and must, therefore, according to the construction quoted by defendant, include the entire claim involved in the cause of action. The plaint omits all allusion to landed property, and is, therefore, opposed to the law. The plaintiff is accordingly nonsuited.

THE 12TH MARCH 1851.

No. 182.

*Appeal from a decision of the Moonsiff of Anundpore, Omes Chunder Mookerjee, dated 30th December 1848.*

Gyaram Roy, (Defendant,) Appellant,

*versus*

Becharam Mookerjee, (Plaintiff,) Respondent.

THIS action is brought to recover Company's rupees 115-0-12, on a deed of contract.

The plaintiff avers that the defendant Joodhistee was on adjustment of accounts his debtor to the extent of Company's rupees

100. For the liquidation of this sum the defendant, Joodhistee, and his father Nundram, gave the plaintiff an ikrarnamah to pay the debt in a year, pledging mouza Terungacha as security for the fulfilment of the contract. The defendants Joodhistee and Nundram allowed judgment to go by default, after plaintiff's exhibits had been filed. The appellant Nundram's son petitioned the court that his father had died; that his father was no party to the ikrarnamah; that his half brother, the defendant Joodhistee was the person who borrowed the money on his own account, for which he is solely responsible. This case came on for trial in appeal on 27th August 1849, (*vide* Zillah Decisions for that month, page 73,) when it was remanded to the moonsiff for a review of judgment, his decision appearing to be opposed to evidence and to the opinion he had recorded of the ikrarnamah. The moonsiff affirms his original orders, and defendant Gyaram, dissatisfied, appeals. The plaintiff's claim is based on the ikrarnamah, and the issue to be tried is whether that document was *bonâ fide* executed by Joodhistee and appellant's father Nundram or not; the appellant denies his father had any thing whatever to do with it. It is, therefore, necessary to examine by what evidence the ikrarnamah is supported.

In the first place the ikrarnamah is engrossed on a stamp paper purchased by a third party at Midnapore, totally unconnected with the parties concerned in the present suit, two months and a half prior to the date of execution of the ikrarnamah. If the ikrarnamah had been signed and attested as represented by the defendant and witnesses on 23rd Chyete 1252 Umlee, it is reasonable to suppose that the stamp paper would have been procured from the nearest stamp vendor by one or other of the parties interested and at the time it was required. Again, the deed is certified by three witnesses who depose to circumstances, which, it is beyond probability, they could have remembered, unless they had been tutored: their evidence is not trustworthy or entitled to credit. Joodhistee may have borrowed the money as stated, and Nundram may have been his surety; but that Nundram was a party to the execution of the ikrarnamah by which the present claim must stand or fall is not proven. I, therefore, reverse the verdict of the lower court, and decree the appeal, with costs.

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THE 12TH MARCH 1851.

No. 186.

*Appeal from a decision of the Moonsiff of Niccasee, Warris Allee,  
dated 13th June 1850.*

Sookdeb Adhuk, (Defendant,) Appellant,

*versus*

Bissomohun Bhattacharge, (Plaintiff,) Respondent.

Brimo Mohun and Brijo Mohun, first opponents.

Poolin Chunder Gossein, second opponent.

THE plaintiff sues for a balance of rent for 1255 and 1256, Company's rupees 12-2.

He avers that he holds on a farming lease from one Poolin Chunder Gossein, 22 b., 1 c., 3 pudkas of lakhiraj land in mouza Jyenugger, pergunnah Dhorodhoon, from 1252 to 1255; that this land originally belonged to him as proprietor, but that he sold his interests therein to Poolin Chunder, who let him the farm of it in the manner aforesaid; that the defendant cultivates 1 beegah, 7 cottahs of the said land for which he gave a kubooleut in 1253, and agreeably with which he paid rent in 1253 and 1254, but is a defaulter for 1255 and 1256.

The defendant denies the claim altogether, and pleads that the lakhiraj burmootur alluded to by plaintiff, is a joint undivided property in possession of the first opponents and plaintiff; that he paid his rent till 1252 to the respective proprietors, and in that year resigned his lease from which date Radoo Jana has been in possession of it. The first opponents affirm the defendant's pleas, and the second opponent confirms the plaintiff's averment. The moonsiff records his opinion that it is proved by the testimony of witnesses that the defendant gave the plaintiff a kubooleut, and paid his rent in kind to him in 1254. He adds further, that plaintiff's possession is established by the zemindar's kyfeut, the decision of a deputy collector and the admission of the 3rd party Poolin Chunder Gossein, and gives a verdict for the plaintiff.

The plaintiff's claim is grounded on the kubooleut, and the issue to be tried is its validity. In this document it is not specified on what date defendant's lease is to commence, nor when to terminate. Plaintiff urges that the date of the farming lease is specified, and that it may, therefore, be inferred, that defendant's lease was to be guided by the same date: according to the kubooleut the farming lease was to terminate in 1255; if defendant's lease also ceased, then how can plaintiff sue for a balance of rent for 1256, when his lease as farmer had expired? The plaintiff attempts to explain this by stating that the farming lease was for the Bengallee year; but it is very improbable that plaintiff in engaging for lands in pergunnah

Dhorodhoon, where the Umlee year prevails should have adopted the Bengalee year: except the kubooleut there is no evidence of defendant's liability, and as that document is not trustworthy, and the attesting witnesses have evidently been tutored, I reject the plaintiff's claim, and decree the appeal, with costs.

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THE 24TH MARCH 1851.

No. 265.

*Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq., dated 26th September 1850.*

Rance Monjarah Dey, (Defendant,) Appellant,

*versus*

Mr. R. Watson, (Plaintiff,) Respondent.

THE plaintiff sues for possession of mehal Bulrampore: suit valued at Company's rupees 2999-15.

He avers that the defendants Ram Mohun Dey and Kartick Ram Dey took a farming lease for twelve years of the mehal aforesaid from the defendant Rance Monjarah Dey, which lease the Deys transferred to the plaintiff.

The defendant Rance denies having leased the mehal to the Deys, and pleads that the documents produced by plaintiff are fictitious; that Kartick Ram Dey was her karpurdauz, had access to her seals and papers, which he fraudulently applied to his own purposes.

The defendants Ram Mohun and Kartick Ram affirm defendant's title. The collector, as a third party, objects to the transfer, as the lands are the property of Government, and that the rancee by the terms of her lease could not sublet the mehal.

The principal sudder ameen overrules the collector's objection, as there is nothing on record to show that the rancee has not a perfect right to dispose of her lease during its continuance in any way she may think proper. In reference to the farming pottah granted by the rancee to the defendant, Ram Mohun Dey, the principal sudder ameen remarks:—"We think the ijarah pottah satisfactorily proven, notwithstanding the conflicting evidence of two of the witnesses. The writer of the pottah, Tara Chand Bose, has given his evidence most reluctantly, and this is accounted for. He was then and still is the rancee's mooktear. He admits, in his cross-examination, that he received a mooktearnamah in the rancee's name to get the said lease and receipt duly registered, and that he acknowledged before the register that the within written consideration had been received had the aforesaid lease been a forgery. It is impossible to believe that a *particeps criminis* would be still retained by the rancee, or that she would not have

taken measures to punish the machinations of her enemies; she has failed also to prove that Ram Mohun's son purloined her seals and papers. Considering, therefore, plaintiff's claim fully established, we award them possession of mehal Bulrampur, with costs payable by the ranee."

The ranee, in appeal, raises several objections on technical points, which have already been overruled, and very properly, in my opinion, by the lower court; she then impugns the arguments of the court below as being opposed to evidence, and the circumstances elicited from the records of the case. The ranee pleads that she never executed a lease in favor of Ram Mohun Dey, nor received a consideration from him for the same. In the testimony of the witnesses who swear to the payment of a certain consideration to the ranee by Ram Mohun, there are some discrepancies, and, if taken by itself, it might not be entitled to credit; but it is corroborated by documentary evidence and probabilities, which are strongly in favor of the truth of plaintiff's averments.

\* Tara Chand Bose denies that the farming lease was executed and registered with the ranee's concurrence, if this be credible.

The witness\* Tara Chand Bose must, in collusion with Ram Mohun Dey, have conspired at the fraud perpetrated by the latter on his mistress, and aided and abetted him in causing a forged deed to be registered; but it is quite beyond the bounds of belief that, if Tara Chand had played so treacherous a part towards his employer, she would have retained him in her confidence, and entrusted him with the responsibility of conducting the present suit, and that such responsibility has been reposed on him may be inferred from the fact of his having purchased in his own name all the stamp paper used in carrying the suit through the lower court, and in preferring this appeal. Again, the lease was granted to Ram Mohun Dey on the 29th July 1846; but the ranee offered no objections to it till January 1847, nearly six months subsequently. If Ram Mohun Dey's son had run off with the ranee's seals and papers, why did she not take measures to recover them, and to repudiate any documents that might bear her seal after the theft occurred, her silence contradicts her present allegations. The lease, in my judgment, was granted to Ram Mohun Dey in perfect good faith, and I, therefore, see no reason to disturb the decision of the principal sudder ameen, which is hereby affirmed, without serving a notice on the respondent.

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THE 24TH MARCH 1851.

No. 239.

*Appeal from a decision of the Principal Sudder Ameen, A. Davidson,  
Esq., dated 12th September 1850.*

Gungagovind Bukshee,

*versus*

Radha Mohun Bukshee.

THIS is an action for a bond debt, laid at Company's rupees 1148-12.

The defendant denies the claim, and pleads that he and plaintiff have long been at feud, and that the present suit is brought to gratify revenge.

The principal sudder ameen rejects the evidence of the witnesses attesting the bond as totally unworthy of credit. He further deems it improbable that plaintiff should have granted a loan to defendant at a time, as is proved by the documents filed in the suit, when plaintiff had prosecuted the defendant in the foudaree court for a breach of the peace and usurping possession of some land, and gives a verdict for defendant.

In appeal, the plaintiff takes exception to the reasoning of the lower court; but, on a review of its proceedings, I see no reason to differ in the conclusion at which it has arrived. The witnesses have no doubt been tutored, or they could not relate circumstances that occurred three years ago with the freshness and minuteness of yesterday. The probabilities are likewise opposed to the truth of the claim. The stamp paper is endorsed to one Premchand Potdar, of pergunnah Chetooah, and is of a size usually used for plaints and not for bonds; why Premchand, a resident of a different pergunnah, unconnected with the parties in the suit, should furnish the stamp for plaintiff's bond is not explained; but the inference is justified that plaintiff procured such paper as was available to suit his purpose in reference to date and value. The existence of a feud between the parties is clearly established by the prosecution in the criminal court a few days previous to the date which the bond bears, which renders it very unlikely that plaintiff would lend to, or defendant borrow money from each other under such circumstances. The decision of the principal sudder ameen is affirmed, without serving a notice on the respondent.

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THE 25TH MARCH 1851.

No. 226.

*Appeal from a decision of the Sudder Ameen, Baboo Taruck Chunder Ghose, dated 14th August 1850.*

Damooda Chowdhry, (Plaintiff,) Appellant,

*versus*

Gooroopershad Dey, (Defendant,) Respondent.

THIS is an action for damages for losses sustained by an illegal attachment, laid at Company's rupees 784.

The plaintiff's half brother was sued and cast in a suit for a bond debt.

In serving out the decree sundry goods and chattels, belonging to plaintiff in mouza Bonomaleepore, were attached in Phalgun 1252 Umlee. He opposed the sale, proved possession, and the attachment was removed by orders of the moonsiff in Assar 1253 Umlee, which became absolute in default of appeal. Plaintiff adds that he has sustained losses by the attachment to the extent of Company's rupees 564, which he now seeks to recover, with interest.

The defendant denies his liability, pleading Construction No. 958, as a bar thereto, he further pleads that plaintiff sustained no injury by the attachment.

The sudder ameen considers the construction quoted as inapplicable and proceeds to inquire what damages, if any, the plaintiff has sustained by the attachment, which is clearly proved to have been made and removed, as illegal. He rejects plaintiff's claim to compensation for produce of certain cows, the labor of bullocks, the produce of land that might have been cultivated had the bullocks been available, servants' wages, &c., as it is not proven that plaintiff sustained any injury by the attachment of the cattle; but on the contrary that it is established that the said cattle, though nominally attached, were in plaintiff's keeping, and that he had the entire management of them without any prohibition further than that he was not to sell, or otherwise *make away* with them till further orders of the court. With regard to the grain and certain monies amounting to rupees 46-4 attached, he considers the plaintiff entitled to interest on the estimated selling price of the former at the time of attachment, and on the 46-4 cash, and gives a verdict accordingly.

In appeal, the plaintiff demurs and argues that he is entitled to the whole of the damages as laid in the plaint.

On reviewing the proceedings of the lower court, I coincide, save and except in that part, which has reference to the grain attached. Plaintiff argues, and very justly, that had the rice been at his command he could have disposed of it at a profit, on loans to be repaid when the new crop was cut. The sudder ameen has not taken this point into consideration at all, nor indem-

nified the plaintiff for his loss again, he has estimated the selling price of the grain at the time *it was attached*, instead of at the time it was released as was equitable. I, therefore, admit the appeal, and remand the case to the sudder ameen, who will restore it to his file, and then proceed to enquire what profit plaintiff could have made of his grain from Phalagoon 1252 Umlee to Assar 1253, had it been in his possession, and, if any, to add it to the quantity of grain in store, then to calculate the interest on the *whole* at the estimated selling price, *not* at the time of attachment; but at the time the attachment was removed in Assar 1253, when the dhan was available to plaintiff to dispose off. The institution fee to the refunded.

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THE 25TH MARCH 1851.

No. 257.

*Appeal from a decision of the Sudder Ameen, Taruck Chunder Ghose, dated 20th September 1850.*

Komol Chunder Roy, (Defendant,) Appellant,

*versus*

Aijeez Dilla, (Plaintiff,) Respondent.

THE plaintiff sues for house rent, &c., from 1250 to 1256 Umlee, Company's rupees 926.

He states that he purchased a house, messuages, &c., sold in execution of a decree; that he let the said house, &c., in 1250 Umlee, to the defendant at a monthly rental of rupees 10, who gave him an agreement duly signed and attested and registered; that by levying an attachment he succeeded in recovering rupees 90 of rent; but failing to obtain any more, he has instituted the present suit.

The defendant denies the claim and pleads that he took a lease of plaintiff's house for three years from 1250 Umlee; that he has liquidated all the rent for which he was liable by money payments and sundry outlays in repairs; that he holds acquittances for the monies paid to plaintiff, and that he gave up the house at the end of 1253 Umlee, and has not since resided in it.

The sudder ameen records that the issues to be tried on the averments are, whether the counterpart of the defendant's lease filed by the plaintiff is good and valid? Second, whether the defendant now occupies the house, and is liable for rent to the period sued for? The issues in bar are, whether the defendant resigned his lease? Whether during his occupancy he laid out any monies in repairing the house, and has made good all his liabilities to plaintiff? The proof of payment of rent up to 1253 Umlee rests on six dakhilas, which the sudder ameen deems not trustworthy, as from the color of the ink, the manner in which the paper has been smeared over

with dirt to give it the appearance of age, they are evidently fabrications, they are also verified by witnesses, who swear they carried the money to plaintiff who furnished the dakhilas.

The sudder ameen rejects their testimony as suspicious, tutored and improbable; he overrules defendant's plea of expenditure on account of repairs as not warranted by the terms of the agreement, and if made, of which there is no evidence whatever, the proof that he (defendant) acted under authority is wanting. He also rejects defendant's plea of having given up the lease in 1253, and having gone to reside elsewhere; every opportunity was allowed him to prove that he has resided in another house since 1253, but he has neglected to avail himself of it. The sudder ameen further attaches no credit to defendant's allegation of having given the plaintiff an istafa, or deed of relinquishment. If, as the defendant alleges, he gave up the house when the lease expired in 1253, where was the necessity of an istafa. The plaintiff, on the other hand, establishes his claim by the deed of agreement duly certified by the attesting witnesses, and by defendant's possession clearly proved to have been continued to the close of 1256 Umlee, and he gives a verdict for plaintiff accordingly.

On a review of the proceedings, I see no reason to differ in opinion with the sudder ameen. The appellant lays stress on the istafa, which he states he gave the respondent in 1253 Umlee; but by his own showing the account he has rendered of payments made to plaintiff the total sum liquidated is short by 42 rupees of the amount to which plaintiff was entitled, supposing even that defendant's possession terminated at the close of 1253 Umlee. Moreover, defendant's denial of *any* liability to plaintiff is a contradiction of the accounts above alluded to—no reliance, therefore, can be placed on his statements. It is improbable likewise that plaintiff should have received an istafa when the rent to the end of 1253 had not been paid. The decision of the lower court is affirmed, without serving a notice on respondent.

THE 31ST MARCH 1851.

No. 262.

*Appeal from a decision of the Sudder Ameen, Taruck Chunder Ghose,  
dated 22nd November 1850.*

Raja Man Gobind Dhull, (Defendant,) Appellant,

*versus*

Ameer Khan, (Plaintiff,) Respondent.

THIS action is for the recovery of wages for services rendered from 23rd Aughun 1253 to 27th Phalgun 1257 Umlee, at the rate of Company's rupees 15 per mensem.

The plaintiff states defendant gave him a written agreement that he would pay him 15 rupees a month, and give him his food as long as he (plaintiff) remained in defendant's service as a horse-breaker. The defendant failing to fulfil his contract, plaintiff applied to the criminal court under the provisions of Regulation VII. of 1819; but more than twelve months having elapsed since the cause of action arose, the case was dismissed, and plaintiff, having no other remedy, now sues to recover by a regular suit. The defendant allows judgment to go by default. The sudder ameen gives a verdict for the plaintiff.

In appeal, the defendant demurs that his plea for not filing a reply was overruled on insufficient grounds and quotes precedents in favor of his argument, but these are inapplicable. Under Construction No. 375, the sudder ameen was justified in rejecting the reasons assigned for default which are frivolous and vexatious. The sudder ameen has, however, overlooked an important point; he has never alluded to the deed of agreement either in his proceeding held under Section 10, Regulation XXVI. of 1814, or in his final decree. This deed is the principal ground of action, and the chief issues to be tried as to its truth or otherwise. I, therefore, admit the appeal, and remand the case that the sudder ameen may rectify this error, confining his inquiry to this one point. The institution fee to be refunded.

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THE 31ST MARCH 1851.

No. 261.

*Appeal from a decision of the Sudder Ameen, Taruck Chunder Ghose,  
dated 22nd November 1850.*

Raja Man Govind Dhul, (Defendant,) Appellant,

*versus*

Sheriar Khan, (Plaintiff,) Respondent.

THIS is an action to recover Company's rupees 534-4-16, on a promissory note.

The plaintiff states he is a cloth and horse merchant; that on the 15th Asar 1254 Umlee he sold the defendant a mare, some shawls, kinkhaf, &c., valued at rupees 411. The defendant, not having a command of money at the time, gave plaintiff a promissory note which was to be redeemed in Kartick 1255, in failure thereof interest was to be charged. Defendant not having fulfilled his engagement, the plaintiff now sues.

The defendant allows judgment to go by default. After the plaintiff's exhibits had been filed and the *ex parte* roobukarry had been recorded, the defendant appeared and pleaded that the delay in filing his vakalutnamah was owing to the illness of one of the witnesses, who fell sick in his way to court to certify the power of

attorney authorizing the mooktear to file the vakalutnamah above alluded to.

The lower court allowed defendant to produce his evidence as to the truth of the plea, but rejected it as vexatious and improbable in his final award. The sudder ameen is of opinion that the promissory note is substantiated by the evidence of attesting witnesses, as also that defendant received a valuable consideration in lieu of it, and gives a verdict for the plaintiff.

In appeal, the defendant demurs that the lower court was not warranted in deciding the case *ex parte* without disposing of his demurrer in a separate proceeding, and quotes several precedents to show that there were no grounds for refusing defendant's permission to reply to the plaint. It appears that plaintiff's exhibits were given in, and the *ex parte* roobukarry recorded on 10th July. Defendant's vakalutnamah was not filed till the 13th of the same month, and on the 3rd August he presented a petition, assigning reasons for the delay, which, the court not considering satisfactory, after taking evidence, were rejected. Such a proceeding was quite consistent with the spirit and letter of Construction No. 375, and I see no grounds for interfering with it. Appellant's default below having been wilful, the issues in bar of plaintiff's claim cannot be entered on. The decision of the sudder ameen is accordingly affirmed, without serving a notice on the respondent.

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## ZILLAH MOORSLEDABAD.

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PRESENT: D. I. MONEY, Esq., JUDGE.

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THE 28TH MARCH 1851.

No. 11 of 1846.

*Regular Appeal from the Decision of the Principal Sudder Ameen,  
Moulvree Syud Abdool Wahid Khan Buhadoor.*

Ranee Kistomunee Dibeas, (Defendant,) Appellant,

*versus*

Ranee Joymunee Dibeas, after her death, Doorga Chunder Roy,  
(Plaintiff,) Respondent.

SUIT for the recovery of the possession of a Googur ghaut, with mesne profits, laid at Company's rupees 1025-13-7.

The substance of the plaint is as follows. One of the ghauts belonging to the plaintiff called Domecole ghaut, together with houses, lands and gardens in her possession, being rent-free tenures, was resumed under Regulation II. of 1819, and a settlement of beegahs 203, 12 cottahs, concluded with her by Government. The plaintiff in virtue of a deed of lease obtained by her from Government held possession.

The defendant in the month of Srabun 1248 B. S., preferred a petition to the magistrate claiming the site of the ghaut, and requesting the removal of the plaintiff's ghaut, and the substitution of her own in its place. The magistrate gave a decision against the plaintiff and ordered the removal of the Domecole ghaut to the distance of twenty russees from its former position, and his order was upheld by the sessions judge in appeal. Previous to this when Mr. Laruletta opened a new ghaut, where the plaintiff's ghaut was situated, she complained to the magistrate and the magistrate interfered and prevented the encroachment. The order directing the removal of the Domecole ghaut was the cause of the institution of this suit.

The defendant, in her answer, denied the plaintiff's statement, and pleaded that the disputed ghaut was the chuck Bhowance ghaut belonging to her as proved before the magistrate, and confirmed by the sessions judge in appeal; that as the lands were settled with the plaintiff in perpetuity, her (plaintiff's) valuation was not correct. It ought to have been three times and not four times the amount of the



annual jumma, or ten times the amount of the annual profits of the ghaut, and the case was liable to nonsuit.

The plaintiff, in replication, stated that the ghaut in question was the Domecole ghaut, and that the deputy collector's measurement chittahs would show that it was included in the resumed lands, which had been settled with her.

Doorga Chunder Surma, claimant, petitioned the court to be admitted as plaintiff (respondent) in Ranee Joymunee's stead.

The principal sudder ameen, considered the claim of the plaintiff satisfactorily proved by both documentary and oral evidence, and with reference to the report and map drawn up by the serishtadar of his court deputed to the spot for the purpose, and the measurement chittahs of the deputy collector, gave a decree in favor of the plaintiff in part of her claim, viz., for possession of the ghaut in question, and not for mesne profits, the claim to which was not proved.

The defendant appealed from this decision, adding to her former pleas that the report and map prepared by the serishtadar of the principal sudder ameen's court, will show that the extremity of Rajagunge is north of her (defendant's) ghaut, and that north again of this the plaintiff's ghaut lies; that although the settlement of the resumed lakhiraj lands was made by the deputy collector with the plaintiff, yet it is no reason why lands situated within the limits of other zemindaries should be considered as included in them; that the defendant in proof of her pleas had filed a kyfeut of the collector's office of 1814; that the map drawn up by the serishtadar will show that between Gundhurb Singh's chownie on the east bank, and Rajgunge on the west bank of the Bhagurutty the defendant's ghaut lies; that the principal sudder ameen has, contrary to the faidad filed by the plaintiff, declared the plaintiff's ghaut in question to be in Rajagunge; that the proceedings of the collector of the 20th May 1819, will show that the plaintiff's ghauts are separate from the ghaut of the defendant; that the principal sudder ameen did not take the plaintiff's incorrect valuation into consideration, which under schedule B, Art. 8 of Regulation X. of 1829, ought to have been estimated at the selling price of the ghaut.

Doorga Chunder Surma, on the demise of the plaintiff (respondent) chiefly stated, in his answer to the plaint of appeal, that the disputed ghaut is in Domecole, and that it is so called because the domes (a low class) throw dead bodies there.

#### JUDGMENT.

This suit has arisen from a long pending dispute between two parties regarding the right of possession to a ghaut, which one party claims as the Domecole ghaut, and the other as the Buvanee ghaut, the one as attached to Domecole, the other to Kashgunge on the eastern, and Rajagunge on the western side of the river.

The plea preferred by the appellant against the valuation of the plaintiff as a ground for nonsuit, is not, in my opinion, tenable with reference to the Circular Order of the 20th August 1841, and the suit of Bechoo Opadhia and others *versus* Shah Mohumudee and others, in Select Report, page 286 of 1846. It is necessary, therefore, to decide the case upon its merits.

From the papers and evidence put in by the parties, it appears, that each has had a ghaut in his own jurisdiction; but in consequence of their respective estates adjoining, and the ghauts being too near each other, there has been a clashing of interests and a transgression of the boundary line. This led the magistrate, in 1841, in order to keep the peace to order the plaintiff's ghaut (Domecole) to be removed 20 russees from the defendant's ghaut (Buvanee). The order of the magistrate was again issued in 1843, and on appeal confirmed by the sessions judge in 1844. The present suit was, in consequence, instituted by the plaintiff in the principal sudder ameen's court.

In 1843, 203 beegahs, 12 cottahs resumed lands of chuckla Bunnuggur, to which the Domecole ghaut was attached, were settled in perpetuity with the Government, and in the measurement chittahs the boundaries of the ghaut are specified.

The principal sudder ameen has given a decree in favor of the plaintiff for possession of the ghaut agreeably to the boundaries indicated in the measurement chittahs; but at the same time he grounds his decree as much upon the report and map drawn up by the serishtadar of his court as upon the measurement and settlement papers; now the map and report do not agree with these papers. The map and the report seem to place the disputed ghaut within the boundary and jurisdiction of Rajagunge, whereas the measurement and settlement papers indicated its situation within Domecole and north of the boundary line of Rajagunge; should a decree partly based upon such documents be upheld, its exact locality in giving possession would not be defined, and hereafter disputes would continue as before. The principal sudder ameen should either have reconciled the discrepancies between the map and report and the measurement and settlement papers, or have thrown out the former as incorrect, and based his decree upon the latter. I consider his proceedings defective. The disputed ghaut is not far distant from his court, and a careful enquiry by himself on the spot, with a map more correctly drawn up, might settle the matter in dispute for ever, giving satisfaction to both parties. I therefore admit the appeal, and remand the case to him for re-trial, with reference to these remarks. The stamp value on the petition of appeal to be returned to the appellant.

THE 31ST MARCH 1851.

No. 11 of 1847.

*Regular Appeal from the decision of the Principal Sudder Ameen, Syud Abdool Wahid Khan Buhadoor.*

Warris Alee, (Defendant,) Appellant,

*versus*

Syud Zohur Alee, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 1078-8-3, being treble the amount of rupees 359-13-9, or the excess of Company's rupees 36-4-3, exacted from the plaintiff as rent due for 1250 B. S. Instituted 9th April 1845, and decided 30th July 1847.

The plaint sets forth that the plaintiff from the time of his ancestors held mokurruree and other jummas both in his own and in his son's names to the amount of Company's rupees 36-4-3, in mouzas Bashoopara, Shohabazpore, and Bugolahooree, situated within the 10 annas share of the zemindaree of Rajah Kishennath, (deceased) in turuf Bahadorepore; that the plaintiff paid the amount of his jummas to the zemindar and others, and held receipts in proof thereof; that in 1250 B. S. these mehals were farmed out by the zemindar to Hemayet Duffadar, defendant, in the name of Warris Alee, defendant; that the former took possession and refusing 36-11-3, amount of rent offered by the plaintiff, claimed through the Ferosh ameen rupees 342 under Regulation V. of 1812; that the ameen attached his property when the plaintiff petitioned the collector, who ordered the ameen to proceed agreeably to Regulation V. of 1812; that the plaintiff gave security and applied for the usual certificate; but the ameen instead of granting it, proceeded to sell his property, reporting to the collector that he had not paid the amount claimed within the prescribed period, and the collector struck off the case on the 14th January 1845; that the plaintiff to save his property from sale deposited the amount claimed, and brought this action against the defendant and others under Section 52, Regulation VIII. of 1793.

The defendant Warris Alee pleaded that he was himself the real and not the benamee izardar; that he realised the amount of rent actually due from the plaintiff, and no more, under Regulation V. of 1812; that the plaintiff having taken an under farm of the said mehals took possession of lands in excess of his pottah or lease for which he paid rupees 342 before, as will be verified by the jumma-wasil-bakee papers upon which the defendant based his claim, and that Hemayet Duffadar is putneedar.

The defendant, by a supplementary, answer amended his error in having stated that rupees 342 were due from the plaintiff, with interest, instead of rupees 326-6-14.

The defendant Hemayet Duffadar chiefly pleaded that Warris Aleo was at variance with him.

The plaintiff, in replication, added that long before his dur-ijarah of the mehal, he obtained pottahs from Mahomed Aleo and others, former dur-izarahdars, for 129 beegahs of land, at an annual jumma of rupees 16-1-2, which can be proved by a decree of the appellate court; that the defendant can show no kubooleut, or engagement, while the plaintiff holds farkuttees, or deeds of release, from the manager of the estate on the part of the Court of Wards to prove his statements.

The principal sudder ameen gave a decree in part in favor of the plaintiff, considering his statement regarding the jumma payable by him, viz., 36-4-3 per annum, proved by both oral and documentary evidence, and because, in his opinion, the claim of the defendant Warris Aleo to 326-6-14, as the annual jumma payable by the plaintiff, was not established. There is no credit given for that amount, and nothing to show that it was even realized, in the jumma-wasil-bakee papers filed by the defendants from the zemindar's serishta, and as the witnesses brought by the defendant to prove the fact are dependent on him, their evidence cannot be trusted; besides which, he continues that in the suit, No. 53 of 1845, instituted in his court for the enhancement of the rents of the plaintiff's same jote jumma, had the defendant's statement been true, Hemayet Duffadar, defendant, would never have called himself putneedar, and Warris Aleo izardar of the mehal in which the plaintiff's jote lands are situated. But as by Section 16, Regulation VII. of 1799, zemindars and farmers are exempted from the liability contemplated in Section 52 of the Regulation quoted by the plaintiff by proceeding under the Regulations VII. of 1799 and V. of 1812; the plaintiff is not entitled to a decree of thrice the amount of the exaction, but to a refund of the amount in excess with interest from Warris Aleo, defendant, viz., rupees 480-9-2, and with costs, &c., as may be ascertained hereafter.

The defendant, in his appeal, from this decision urges chiefly that the copies of the farkuttees, or deeds of release, produced by the plaintiff are fictitious, and even, if true, not sufficient to prove payment of the jummas he holds for more than three years, and that as the plaintiff has not included the zemindar as defendant in his plaint, the suit cannot be heard, and that it was illegal in the principal sudder ameen to decree the claim of the plaintiff even in part against him alone, since his claim was based upon the jumma-wasil-bakee papers in the time of former zemindars, and the defendants had, in attempting to realise the amount of arrears, proceeded in conformity to the provisions of Regulation V. of 1812.

The plaintiff (respondent) appears of his own accord through his pleader in this court, and prays the court to give him the benefit of the appeal, conformably to Construction No. 868, and that as the

principal sudder ameen has exonerated the defendant Warris Aleo from the liability of his decree, the court would pass a decree against Hemayet defendant, who is the real benamee izardar; the plaintiff also states that his costs of Bhugulpore were omitted by the principal sudder ameen in his decree.

The plaintiff (respondent) subsequently, in a petition, states that Warris Aleo is a fictitious person, and Hemayet defendant, the true izardar, and prays that his former statement, which was a mistake of the writer, might be amended.

The principal sudder ameen states that Section 16, Regulation VI. of 1799 exempts zemindars and farmers from the liability contemplated in Section 52, Regulation VIII. of 1793, if they proceed under Regulations VII. of 1799 and V. of 1812. This is an error as far as Regulation V. of 1812 is concerned. Section 16 of Regulation VII. of 1799 could not provide an exemption for a process under a subsequent Regulation V. of 1812, although any one proceeding under that Regulation could, from the authority of Regulation VII. of 1799, extended to it, be entitled to such exemption. It is an error in the expression, though the meaning is intelligible. The defendant has only put in as exhibits the zemindar's jumma-wasil-bakee papers for 1849, in which credit has not been given for sums realised from the plaintiffs. I concur with the principal sudder ameen in not placing reliance upon them. The plaintiff has put in a pottah and farkuttees, or deeds of release, and receipts, which are confirmed by his witnesses. The grounds given by the principal sudder ameen for his decree are sufficient, and I see no reason to interfere with it. The appeal is, therefore, dismissed, with costs, and the principal sudder ameen's decision confirmed.

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THE 31ST MARCH 1851.

No. 2 of 1848.

*Regular Appeal from the decision of the Principal Sudder Ameen, Syud Abdool Wahid Khan Buhadoor.*

Bawool Chunder and Poolin Chunder Sircars, (Defendants),  
Appellants,

*versus*

Raja Kishen Chunder, (Plaintiff,) Respondent.

SUIT for the recovery of arrears of rent, Company's rupees 1149-9-6, under a kabooleut, executed on the 15th Jyte 1242 B. S. Instituted on the 15th December 1846, and decided 29th January 1848.

The plaint sets forth that while the plaintiff was zemindar of pergunnah Gowas, the defendant Bawool Chunder Sircar leased

736 beegahs of jote lands, situated in mouza Shahibnugger, within hoodah Deveepore, included in the said pergunnah, with certain conditions at an annual jumma of Sicca rupees 115, which he engaged to pay to the plaintiff; that Poolin Chunder defendant stood security for him; that the defendant after taking possession of the lands paid 1 rupee only, and failed to pay 574 rupees principal, and rupees 503, 11 annas interest, or in the aggregate 1149-9-6, arrears calculated from 1243 to 1247 B. S., and that the plaintiff, therefore, sued the defendant for the recovery of the amount, with interest, accruable to the date of realization.

The defendant Bawool Chunder Sircar, in his answer, admitted the lease, but pleaded the plaintiff did not, according to agreement, give him possession of all the lands agreeably to the boundaries specified in the lease; that he was dispossessed of 175 beegahs by one Khoodeeram Mundul, who afterwards under Act IV. of 1840 was put into possession of the same by the magistrate; that, failing to obtain possession of the lands, the defendant on the 12th Chyte 1242 B. S., by deed of relinquishment, resigned them to the plaintiff, who accepted the resignation; that the amount of rent received by the plaintiff from the defendant for the year 1242 B. S., was not returned to the defendant; that he was about to sue the plaintiff for the same; but the plaintiff, in order to evade payment, brought this false action against him, and that although Gosayn Gungaram Doss, the present zemindar of the pergunnah, obtained a decree against the defendants for arrears of rent, they have preferred a special appeal from it, which is still pending.

The defendant Poolin Chunder Sircar pleaded on the same grounds.

The plaintiff added, in replication, that if Gosayn Gungaram Doss, a subsequent proprietor of the pergunnah, was entitled to recover rents due on the same jote jumma from the defendants; the plaintiff being the former proprietor has every right and title to the rents claimed, and the plea of the defendant disposed of by the courts both original and appeal in the decree passed against the defendant Bawool Sircar cannot now be considered in contravention of Regulation III. of 1793.

The principal sudder ameen gave a decree in the plaintiff's favor for a part of his claim, on the ground chiefly that the decree obtained in the sudder ameen's court by Gosayn Gungaram Doss, the present zemindar, against the defendant for arrears of rent on the said jote lands for the years 1248 and 1250 B. S., at the annual jumma of 74-8-7-2, as proved by the report of the ameen deputed to the spot in that case, was sufficient to entitle the plaintiff to recover Company's rupees 749-5-3-2 from the defendants.

The defendants appeal from this decision and urge, in their plaint of appeal, that the decree alluded to, of the principal sudder ameen, is not final, since a special appeal has been preferred to the Sudder

Court and is still pending; that the ameen's report, on which that decree is founded, was the result of a partial investigation by the ameen; that the principal sudder ameen did not allow another local enquiry to be made, although the defendants prayed for the same; and that the lands of the jote junma partly resumed by Government, partly taken possession of by others, and partly encroached upon by inundations were not in the possession of the defendants, and that under the terms of their engagement they were not, therefore, liable to the plaintiff's demand.

There are no grounds urged in the appeal that would justify an interference with the principal sudder ameen's decree. It is based upon a previous decree passed by the sudder ameen, which has never been reversed. There was no necessity for a fresh local enquiry, the one instituted under the directions of the principal sudder ameen was carefully conducted and sufficient for the purpose. The appeal is, therefore, dismissed, with costs, and the principal sudder ameen's decision confirmed.

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THE 31ST MARCH 1851.

No. 14 of 1846.

*Regular Appeal from the decision of the Principal Sudder Ameen, Syud Abdool Wahid Khan Buhadoor.*

Ranee Urnopoornah, (Plaintiff,) Appellant,

*versus*

Gungadoss Roy, for self and as guardian on the part of Rakhal Doss Roy, minor, (Defendant,) Respondent.

SUIT for the recovery of the amount of mesne profits of an estate Company's rupees 3718-15-1. Instituted 27th August 1845, and decided 30th March 1846.

From the plaint it appears that pergunnah Cower Pertap, formerly Cower Ramchunder's zemindaree, was purchased by the plaintiff from one Kurreem Chund Golicha, sole purchaser, and conveyed by her (plaintiff) to J. D. Herklots, under a putnee deed of sale on the 25th Aughun 1246 B. S., for 2700 rupees, purchase money, and an annual jumma of rupees 3600-10-10. The plaintiff received 3600-10-10 from the putneedar for the year 1246 B. S., and gave written directions to the defendant and his father and his uncle Ram Kishore Roy, who were in her service, and had charge of the collections of the rents of mouza Chutten Kandee, to make over all the rents collected by them, together with their accounts, to the putneedar. The defendants realised and appropriated to their own use the sum of rupees 2347-5, which they promised to pay, with at the same time an account of the collections, but failed. J. D. Herklots sued for the recovery of the same; but the suit was

dismissed by the principal sudder ameen, and permission granted by the court to the plaintiff to bring an action against the defendants. The plaintiff, therefore, brought this suit against the defendants, for recovery of the mesne profits of mehals Chutten Kundee, &c., from the commencement of 1246 B. S. to 25th Phalgun 1246 B. S., with interest thereon, to the month of Srabun 1252 B. S.

The defendant Gunga Doss Roy, in his answer, denied the claim, and pleaded that he succeeded his father and brother as dewan in the service of Raja Oodmunt Singh; that it was not the custom in the raja's office to allow any of his amlah to realise rents unless they entered into a farming lease; that had the mehals in question been farmed out to him or his brother, the plaintiff would have been able to produce a kubooleut or engagement to that effect, and that if an explanation were called for from Cower Ramchund and Raja Kishenchund, the court would be satisfied on these points.

The principal sudder ameen, considering the evidence on the part of the plaintiff interested and contradictory, and the pleas of the defendants established by the explanation he called for from Raja Kishenchund, dismissed the suit, with costs, against the plaintiff.

The plaintiff, in her appeal from this decision, urges chiefly that the defendant Gunga Doss, his deceased father and uncle, were in the raja's service, and collected the rents of the mehals Chutten Kundee, &c., of which they had the particular charge; that the defendants paid the quarterly rents for 1245 B. S. to the plaintiff; that one of her witnesses, named Mohanundo, was the gomashtha of Gunga Doss; that if the principal sudder ameen had any doubts, he might have satisfied them by holding a local enquiry, which the plaintiff asked for, but which was not granted; that the principal sudder ameen considers the plaintiff's witnesses interested and tutored; that there were respectable witnesses in the villages in question, and had an ameen or trustworthy amlah of the court been deputed to the spot, their depositions and the receipts signed by Mohanund for Gunga Doss defendant, would have established the plaintiff's claim; that Raja Kishenchund was inimical to the plaintiff and furnished an explanation injurious to him, which it was illegal to consider as evidence.

Since the principal sudder ameen has, in contravention of Section 16, Regulation IV. of 1793, taken a report from Raja Kishenchund of matters of fact relating to this suit, in consequence of such irregularity the appeal is admitted, and the case will be remanded to him for re-trial. The stamp fee on the petition of appeal to be returned to the appellant.

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## ZILLAH NUDDEA.

PRESENT: J. C. BROWN, ESQ., JUDGE.

THE 12TH MARCH 1851.

CASE NO. 158 OF 1847.

*Regular Appeal from a decision passed by Baboo Ram Lochun Ghose Rai Buhadoor, Principal Sudder Ameen of Zillah Nuddea, on the 6th September 1847.*

Rajchunder Potodar and Bhickharee Potodar, and after the decease of the first Birchunder and Jadobchunder and others, his sons and heirs, (Defendants,) Appellants,

*versus*

Cazee Huffeezooddeen, and after his decease, his son and heir Wasiffooddeen, (Plaintiff,) Respondent.

THE plaintiff prosecuted to recover possession of certain land, which he had sold conditionally to the defendants.

The defendants deny the conditional sale and produce their deed to prove that there was no condition. This deed, which is admitted by the plaintiff to be the original, is worded as a bill of sale, and no condition is embodied in it; but to meet this the plaintiff has filed an ikrarnamah written on a stamp paper, which was purchased in the same name and on the same date as that on which the deed of sale was written, and witnessed by some of the witnesses whose names are written at the foot of the deed of sale. They are all dead, but one individual, and he has sworn to both documents.

The ikrarnamah purports to have been executed on the same day as the deed of sale by the appellants, and in it is an engagement to restore the property if redeemed within five years, otherwise the sale was to be absolute. This ikrarnamah the appellants deny, and it cannot be proved, because there is only one witness alive to prove it. With regard to the bill of sale, the evidence of one witness is enough, because it is admitted by both parties that it is genuine.

The principal sudder ameen considers the ikrarnamah as proved, because both parties agree that Srikaunt Gangoolce was a witness to the deed of sale, and he swears also to the execution of the ikrarnamah, and that the writing of the ikrarnamah and the bill of sale are evidently in the same handwriting.

In this I do not agree with him, for although the evidence of a solitary witness may be admitted where both parties acknowledge a document, it does not hold good that it is sufficient, where one of them deny a disputed deed. I do not consider the handwriting of the two deeds to be at all similar, but even if it was, that would not be proof.

The plaintiffs (now respondents) twenty years after the date of the deed of sale, presented a petition to the civil court under the provisions of Section 7, Regulation XVII. of 1806, and the appellants gave in their reply that they had purchased the land, and did not take it conditionally. Then two years after the plaintiff sued the defendants for the restitution of the property. If his ikrarnamah was genuine, he ought to have applied to the court at the close of the five years.

The respondents' vakeels have pointed out a decision of the Court of Sudder Dewanny Adawlut, dated the 11th of September 1841, and a summary order, dated 22nd of December 1843, which they consider as precedents, but they do not bear upon this case at all.

I am of opinion that the deed of sale is satisfactorily proved to have been absolute and not conditional, and that the ikrarnamah, upon which the plaintiff (respondent) grounds his claim, is not only not proved, but is open to suspicion, and that the plaintiff cannot recover on it.

Under these circumstances I reverse the principal sudder ameen's order, and decide the case in favor of the appellants, with costs.

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THE 13TH MARCH 1851.

Case No. 168 of 1850.

*Regular Appeal from a decision passed by Baboo Kassissur Mitter, Moonsiff of Kishnaghur, on the 27th November 1850.*

Gokool Doss Byragee, (Defendant,) Appellant,

*versus*

Ram Coomar Sircar, (Plaintiff,) Respondent.

ON the hearing of this case objections were taken by the appellant's pleader to the proceeding of the moonsiff, dated the 21st of June 1850, under the provisions of Section 10, Regulation XXVI. of 1814. On perusal of this document I find the objections raised are valid. There is no specification in it of the points at issue, as required by Act XV. of 1850, and the Circular Order of the Sudder Dewanny Adawlut No. 5, dated 8th of May 1850.

As the proceeding of the 21st of June last lays down no issues at all, and it was not written by the moonsiff, and the defect must be supplied in the lower court, I remand the case for rehearing,

and the moonsiff will avail himself of the opportunity of remedying the errors above noted, and deciding upon the points at issue between the parties.

The usual orders to apply regarding the stamp for the appeal and the costs.

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THE 22ND MARCH 1851.

No. 115 of 1850.

*Regular Appeal from a decision passed by Baboo Ram Lochun Ghose Rai Buhadoor, Principal Sudder Ameen of Zillah Nuddea, on the 26th July 1850.*

Sreeshchunder Sircar, (Defendant,) Appellant,

*versus*

Issurchunder Biswas, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff, now respondent, for obtaining possession of a fishery, or julkur, which the opposite party deprived him of, under the following circumstances.

The plaintiff on the 28th of Assin 1248 B. S., took in putnee from Moharajah Greeshchunder Rai Buhadoor (deceased) in the name of his brother Muheshchunder Biswas, the rent-free villages of Koonwarpore, and got possession.

Afterwards when Moharajah Greeshchunder got the muhal settled for with him, he renewed the putnee on the 29th of Chyte 1253, since which time the plaintiff has been in possession, together with the julkur sued for, which is bounded as described in the plaint, as belonging to Koonwarpore, and leased to Kitabdee Mundul and others, from whom Kishenmohun Rajbungsee, resident of Chowguchiha, rented it from the 27th of Chyte 1247 for rupees 9-8 annually, from 1249 to 1251.

The said Kishenmohun Rajbungsee having been forcibly dispossessed by the adherents of Luckhee Callee, (the mother of the present appellant,) instituted a suit to regain possession in the moonsiff's court at Hanskhallee, when Luckhee Callee stated that the julkur belonged to her putnee, mouza Chundernugger, and in the occupancy of Narain Parrooc. After due investigation by the moonsiff, it was satisfactorily proved that the said julkur was attached to and was the right of the birt of Koonwarpore; but the term of Kishenmohun Rajbungsee's lease having expired, he did not obtain an order to be reinstated in the julkur; but on the 10th of March 1847, corresponding with the 27th of Phalagoon 1253, got a decree for the value of the fish he claimed. Luckhee Callee was dissatisfied and appealed, when her appeal was dismissed on the 20th of August 1847. On the 12th of Chyte 1253, Kitabdee Mundul and others, who had a lease of the julkur voluntarily relinquished

it, and it reverted to the plaintiff, who in order to preserve the fish, having petitioned the criminal court to restrain Luckhee Callee's people from interfering, on the 2nd of Assin 1254 closed the mouth of the fishery. On the following day Narain Parrooe and others, on the part of Luckhee Callee, forcibly cut the embankment, ousted the plaintiff and carried off the fish. The plaintiff then had recourse to the criminal court under Act IV. of 1840, but failed to obtain an order in his favor owing to there being no order in the moonsiff's decree regarding the possession of the julkur; but only damages for the loss of fish were given in favor of Kishenmohun Rajbungsee, and on account of the want of proof on the part of the plaintiff of having been in possession from 1251 to 1253.

Luckhee Callee, the mother of the appellant Sreeshchunder Sircar, having been through Narain Parrooe and others in possession of the julkur from the 3rd of Assin to Maugh 1254, was accordingly made the defendant. Her reply was that the fishery claimed by the plaintiff had for a length of time been part and parcel of Rancenugger, which is attached to Chundernugger, in proof of which Moharajah Greeshchunder Rai Buhadoor, deceased, and his heirs, and after them a purchaser of the estate Nubcoomar Sircar, resident of Goteparrah, and Beebee Badshah Begum and her heir named Shere Ullee, and afterwards Jyhurree Coond, inhabitant of Ranaghaut, by virtue of an execution of a decree were severally in possession of the fishery; she denies that the julkur was ever a part of the birt Coonwarpore, or ever in the possession of the plaintiff in any way, and that when he had a dispute with her father-in-law, Surroop Chunder Sircar, and sued him under the provisions of Act IV. of 1840, it was proved that he never had possession.

The principal sudder ameen has for the following reasons decided the plaintiff's claim in his favor:—First, that on the 10th of March 1847, the moonsiff of Hanskhallee decreed after full investigation that the julkur belonged to mouza Coonwarpore. Secondly, the plaintiff's putnee village Coonwarpore is a resumed rent-free one, that of the defendant is a settled one, and it is clear from an inspection of the measurement papers of the resumption officers, filed by the plaintiff that when Coonwarpore was measured for assessment, the fishery claimed by the plaintiff was included in the measurement. Thirdly, it is clear from a perusal of the decree above alluded to, that prior to 1250 the julkur in dispute was in the possession of the proprietor of Coonwarpore. Fourthly, it is not proved by the documents filed by the defendants that any mention is therein made of any julkur, named Bar Bhangha, is attached to mouza Chundernugger. The copy of a pottah granted to Narain Parrooe, dated 29th Kartick 1229, purporting to have the seal of Badshah Begum on it, has not been proved in any

way, and the copy is not authenticated by any seal or signature. The collectorate measurement papers of the rent-free land of Chundernugger belonging to Debeecaunt Rai, filed by the defendant, cannot be taken as proof of their right to the julkur, because it is not entered in them that the julkur belongs to Chundernugger, there is only a mention of 4 beegahs, 16 cottahs of land at the head of Jole Bar Bhangha. Fifthly, the six witnesses, the defendant has cited, inhabitants of Coonwarpore and Chundernugger, are utterly unworthy of credit, because they have severally deposed to not knowing any thing of the suit in 1250, or of the dispute for the land, or the local investigations which were twice made.

The defendant, in appealing, denies that the decree passed in favor of Kishun Mohun Rajbungsee, has any thing to do with this case; that suit was for a limited lease, and the plaintiff did not obtain possession, which had he had any right to, he would have got, and there would have been no occasion for this suit. Besides the ameen, that was sent out in that case, sided very much with the plaintiff, and his papers are full of mistakes. The appellant was anxious to have an ameen sent to make local investigations when this suit was pending; but it was contrary to the interests of the plaintiff who objected, and the principal sudder ameen would not grant it.

It is not proved in the case which was pending before the moon-siff (as recorded by the principal sudder ameen) that the possession of the plaintiff prior to 1250, was proved, and that the julkur was not in possession of the proprietor of Coonwarpore, even for a day; when the case was pending under Act IV. of 1840, it was on account of the plaintiff not being able to furnish proof of having been ever in possession that the proprietors of Chundernugger were retained in possession.

If the julkur belonged to mouza Coonwarpore, and had been resumed, some trace of it would have been found in the resumption papers, and the plaintiff would have been able to produce a copy in support of his claim; that in all the documents he (the appellant) has filed, it will be found on perusal that the julkur belonged to mouzah Chundernugger; the reasons given by the principal sudder ameen for rejecting the evidence of the appellant's witnesses are very strange, because there is no ostensible reason why they should be in any way acquainted with disputes between other parties. Had they been parties to the suit or witnesses in it, or had the local inquiries been made before them, the case might have been different, and it is hard that because they were ignorant of the proceedings in the suit alluded to, their evidence should be rejected. It is worthy of remark that none of the parole evidence for the plaintiff (respondent) is from Coonwarpore; but are persons of the lower class and under his power; and it is not to be supposed that if the julkur really belonged to him, he had it not in his power to produce his witnesses from his own village. The defendant (appel-

lant) on the contrary has produced respectable inhabitants of Coonwarpore, to give evidence in favor of the julkur in dispute being comprized in Chundernugger.

After due consideration of the whole of this case, I am of opinion that the principal sudder ameen has decreed the case to the plaintiff on insufficient grounds.

*First.*—It does not appear from any of the documents filed by the plaintiff (respondent) that he has any julkur named Bar Bhangha included in his mouza. The defendant (appellant) has, on the contrary, filed a measurement paper numbered 88, in which it is clearly mentioned under two heads, that the Bar Bhangha julkur was included in the measurement of Chundernugger.

*Secondly.*—The plaintiff sued for a certain julkur within certain boundaries; but in the decision and final decree there is no specification of what julkur is decreed further than that which is in dispute, which the plaintiff or defendant may at any time point out in another place.

*Thirdly.*—The principal sudder ameen has given too much importance to the investigations of the ameen in Kishun Mohun Rajbungsee's case. In a dispute like this for the proprietary right he ought to have decided clearly by local investigation (as solicited by the defendant,) to whom the julkur belonged. He ought to have compared the boundaries as written in the measurement papers, and to have ascertained beyond dispute what was the julkur in dispute, and to whose lands it really belonged.

*Fourthly.*—Under the fourth head of his decision he has mentioned that in the measurement papers there is merely a mention of 4 beegahs, 16 biswas of land at the head of the jote Bar Bhangah, which does not establish the defendant's right to the julkur; but he has omitted to refer to the Bar Bhangah jote, measuring 6 beegahs, 13 cottahs written in the same paper, No. 88, and of which the 4 beegahs, 16 biswas was a continuation.

Considering the investigation incomplete and unsatisfactory, I admit the appeal, and under the provisions of Clause 2, Section 2, Regulation IX. of 1831, remand the case for further investigation with reference to the above remarks.

The usual order for the return of the value of the stamp and the costs incurred will issue.

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THE 26TH MARCH 1851.

Case No. 68 of 1848.

*Regular Appeal from a decision passed by Ram Lochun Ghose Rai Buhadoor, Principal Sudder Ameen of Zillah Nuddea, on the 30th May 1848.*

Ram Chunder Mittr, (Plaintiff,) Appellant,

*versus*

Junhuba Munnee Dossca and others, (Defendants,) Respondents.

THE pleader of appellant took a preliminary objection to the decision of the principal sudder ameen, viz., that no proceeding had been held in the lower court under Section 10, Regulation XXVI. of 1814.

On reference to the record I find that no proceeding such as is enjoined in Section 10, Regulation XXVI. of 1814, has been held. The principal sudder ameen has contented himself with recording in a short proceeding the day before he disposed of the case, "that he had to decide whether the plaintiff's suit would lie or not."

He did not call on the plaintiff for any proofs, nor did he put any questions to the pleader, but took up the case on the 30th May, and in a summary manner dismissed it.

The case must, therefore, be remanded for re-trial, in doing which the principal sudder ameen's attention will be drawn to a suit disposed of in the Sudder Dewanny Adawlut on the 25th June 1845, petition, No. 471, page 204, decisions in 1845, Sirnam Misser, petitioner in the case of Biddyadhur Misser, plaintiff, *versus* Bissessur Pandhe and others, defendants, as a precedent.

The usual orders to apply regarding the stamp paper for instituting the appeal and the costs.

THE 26TH MARCH 1851.

Case No. 45 of 1848.

*Regular Appeal from a decision passed by Baboo Ram Lochun Ghose Rai Buhadoor, Principal Sudder Ameen of Zillah Nuddea, on the 15th of April 1848.*

Moonshee Ifazut Ullah, (Defendant,) Appellant,

*versus*

Ram Chundur Mittr, proprietor of a six annas share in talook Dogatcheah and others, (Plaintiff,) and Tirpoora Soondree Dasse, (Defendants,) Respondents.

THIS is a long and complicated case, but it can be condensed into a smaller compass than a full detail of all that has been



brought forward by both parties, as the pleadings contain a great deal of extraneous matter quite foreign to the point at issue which is, "can an individual who has pledged real property, as security, alienate it in any way legally."

A woman became security for the stamp darogah of the Hooghly collectorate, and pledged her 6 annas share of talook Dogatcheah, &c., in satisfaction of it, and covenanted not to sell or bequeath, or alienate any part or portion of the property detailed in the security bond, until it should be cancelled some years afterwards, she gave the property in putnee to the appellant, and thereby reduced its value from 20 to 8 thousand rupees. The collector on being made acquainted with the depreciation of property, certified the value of it to about 10,000, and called on the darogah to furnish a separate security for 5000, which was done.

Subsequently defalcations were discovered in the stamp office at Hooghly, and the security's estates were advertized for sale in the collector's office of zillah Nuddea. Before the sale, the appellant put in his protest, stating that he had purchased the puttunnee of 6 annas of mouza Dogatcheah, &c., and that Tirpoora Soondree Dossee had only the proprietary right. At the sale the collector declared that the right and interest of the security was to be sold. It was knocked down to the plaintiff (respondent,) and the appellant refused to give up his possession as putneedar. The purchaser is thus forced into court.

The principal sudder ameen has decided, first, that it is satisfactorily proved that the defendant, Tirpoora Soondree Dossee, pledged the landed property in dispute as security for the stamp darogah of the collectorate of zillah Hooghly; secondly, that the collector in demanding additional security from his darogah, subsequently did not in any way invalidate the security furnished by Tirpoora Soondree Dossee, nor acquiesce in the alienation she had made of the property; thirdly, that such alienation was illegal, and inadmissible; fourthly, that when the plaintiff purchased the security's right and interest, he purchased not only the proprietary right, but that of possession of the land likewise. Regarding the mesne profits, which the plaintiff has claimed from the day of sale, the principal sudder ameen has only allowed it from the day on which the suit was instituted.

The appellant has appealed on the same grounds that he defended the claim, viz., that his having taken the property in puttunnee was no alienation or depreciation of the value, any more than if he had taken a lease for a limited period; secondly, that the collector in having taken additional security, when he heard that Tirpoora Soondree Dossee's property had deteriorated, acquiesced in her alienation of it; thirdly, the plaintiff, when he purchased the security's right and title, became the

proprietor of the estate, and as such could only demand and receive the rent from him as putneedar.

### JUDGMENT.

I am of opinion that the principal sudder ameen has adjudged this suit, perfectly legally and justly. When I admitted the appeal, it was under the impression from what was verbally stated on the part of the appellant, that the collector of Hooghly had taken an additional security from the stamp darogah, because he discovered that Tirpoora Soondree Dossee had disposed of her lands in putnee to the appellant. This, I now find, was not the case, but that additional security was demanded, because the darogah had a larger amount in trust, than was contemplated when he first gave security.

The respondent, in the closing part of his answer to the appeal, has cited a precedent very much to the point in which the judges of the Court of Sudder Dewanny Adawlut decided, that the grant of a putnee talook in violation of an agreement was to be set aside (*vide* page 56, vol. 6, Mudoosoodun Sandial *versus* Pran Kishun Mittr and others, decided 1st March 1836.)

In this case Tirpoora Soondree Dossee entered into a security bond, and pledged her estates, covenanting not to dispose of them in any way, her granting a putnee of those estates, or any part of them, is a violation of her agreement, and the putnee so granted by her is invalid and must be put aside.

Ordered, that the appeal is dismissed, with full costs, and the principal sudder ameen's decree confirmed.

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THE 27TH MARCH 1851.

No. 65 of 1848.

*Regular Appeal from a decision passed by Baboo Ram Lochun Ghose Rai Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the 30th July 1848.*

Hurchunder Rai, and after his decease, Burdah Dibe, the mother and guardian of Nubkoomar Rai and Kedarnath Rai, minors, his heirs, (Plaintiff,) Appellant,

*versus*

Maharajah Sreeshchunder Rai Bahadoor, (Defendant,)

Respondent.

THE plaintiff instituted this suit to contest a decision made by the superintendent of the khas mehal of certain alluvial lands, which the plaintiff claims as having held rent-free prior to their being washed into the river. The lands were decreed in favor of Government, by the

revenue authorities, under the provisions of Regulations II. of 1819 and III. of 1828, and they were afterwards assessed under Regulations VII. of 1822 and XI. of 1825, and the settlement was made with the defendant Maharajah Sreeschunder Rai Bahadoor; but though the plaintiff states, in his plaint, that he did appeal to the commissioner, there is no proceeding or order filed in the case to prove the nature of his appeal, or the orders upon it. It is, therefore, natural to suppose that if he did prefer an appeal, it was rejected. The plaintiff's suit has been *ab initio* illegal and untenable, because under Clause 3, Section 14, Regulation VII. of 1822, the decisions passed by the collectors under the powers conveyed to them by that regulation, if not altered or annulled by the Board or by Government, must be mentioned by the courts, unless on investigation in a regular suit it shall appear that the possession held under such a decision is wrongful.

In this case the settlement officer's decision has been confirmed by the authority superior to him, and the appellant has not proved that the possession held under that order is wrongful, on the contrary, the plaintiff's (appellant's) claim to having the settlement of the lands claimed by him, was investigated and set aside, and that decision has not been altered by any superior authority.

The collector's or rather settlement officer's decision upon the plaintiff's claim was passed on the 26th of April 1839, but this suit was not filed till the 19th April 1845, nearly six years after a delay which could hardly have been allowed, had the plaintiff any proof of his having the right on his side.

The plaintiff to prove his right to the lands in dispute has filed copy of a decree, dated 11th December 1800, passed by the then register of this court in which the words "Nowchur Simoolea turuf Santipore" have been inserted in the margin, and on the back of the copy is a detail of certain lands. On having the original decree out of the record office it is evident that those words and detail have been inserted to serve some purpose, as they are not to be found in the original. The appellant has given the same ground for appealing that he did for first instituting his suit; but not having proved his claim before the resumption and settlement officers, nor given any evidence that is satisfactory to show that he possesses a prior claim to preference, I concur with the principal sudder ameen.

Ordered, that the appeal is dismissed, and the principal sudder ameen's decision confirmed.

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THE 31ST MARCH 1851.

No. 83 of 1848.

*Regular Appeal from a decision passed by Baboo Ram Lochun Ghose Rai Buhadoor, Principal Sudder Ameen of Zillah Nuddea, on the 14th July 1848.*

James Forlong, (Plaintiff,) Appellant,

*versus*

Tiloke Chunder Sircar and others, (Defendants,) Respondents

THE plaintiff, who is a putneedar of a talook consisting of six mouzas, sues for his right (which is disputed by the defendants) to assess certain lands which the opposite party have in cultivation, in excess of what they are entitled under a decree of court.

In execution of a decree passed by Mr. John Shakespear on the 25th of January 1813, the defendants got possession of 3073 beegahs, 14 cottahs, 11 chittacks of land, according to actual measurement, at the rate of 8 annas per beegah, and two fisheries at a fixed rent of 21 rupees per annum, making in all 1558 rupees, 11 annas, 12 gun-dahs, which decision was confirmed by the Court of Sudder Dewanny Adawlut; subsequently Ramnarain Mookerjea, one of the proprietors, who was a minor at the time the decree was passed, entered a regular suit for its reversal, on the grounds that he was no party to it, being a minor. His suit was dismissed by Mr. T. G. Vibart, and his order was confirmed in the Superior Court by Mr. T. C. Robertson.

The defendants' statement of the case is precisely the same as the plaintiff's, but they deny his right to assess the land belonging to the villages included in his putnee, which are in excess of the 3073 beegahs, 14 cottahs, 11 chittacks and the two fisheries which they were put into possession of after measurement by Ram Nursing Bose, the ameen, who was deputed to carry out the orders of Mr. J. Shakespear's decree.

The principal sudder ameen has dismissed the plaintiff's claim, which was to assess the lands in excess of the quantity, awarded by the above decree. One of the grounds he has given is that when Ramnarain Mookerjea sued for a reversal of the decree passed by Mr. J. Shakespear on the 25th of January 1813, and to have the right of reassessing his moiety of the estate, his suit was dismissed by Mr. T. G. Vibart on the 3rd of July 1832, which decision was confirmed by the Superior Court, and if he had had a right to assess the lands, which are in excess of those awarded to the defendants, an order to that effect would undoubtedly have been passed.

I differ with the principal sudder ameen in this view of the case. Ramnarain Mookerjea claimed "*a right to resume and reassess his moiety of the entire estate on insufficient and untenable grounds*," and because his suit was dismissed, it does not follow that the plain-

tiff (who only wants to assess the lands, which are in excess of those which were included in the measurement made by Ram Nursing Bose ameen, in execution of the decree, dated the 25th of January 1813) is not to be allowed to do so. Why should the plaintiff be expected to pay for the whole of the lands included in his putnee when only a portion of them is assessed. I am of opinion that the plaintiff's claim is not barred by any regulation, nor by either of the decrees noted by the principal sudder ameen, and by several late decisions of the Court of Sudder Dewanny Adawlut, it has been ruled that the claim to assess "lands is a perpetually recurring cause of action."

The question of the right to enhance the rents of under-tenants must, therefore, when raised, be disposed of on its merits. I have no doubt had Ramnarain Mookerjea instituted a suit similar to what the plaintiff has in this case, he would not have had his claim rejected; but he sued for the reversal of a decree, the justice of which he was by law unable to contest.

By that decree the defendants were entitled to obtain possession of 4848 beegahs, but when the lands came to be measured there were only 3073 beegahs, 14 cottahs, 11 chittacks, that were arable, which he had delivered over to him at 8 annas per beegah. At that time there were measured 1378 beegahs, 5 cottahs of land, not fit for cultivation, which were not allotted to him. If that land has now been brought into cultivation, the putneedar has an undoubted right to assess it, if he has given due legal notice.

Being of opinion that the principal sudder ameen's decision is grounded on an assumption obviously erroneous with reference to the points at issue. It is, therefore, under the provisions of Section 2, Regulation IX. of 1831, ordered, that this suit be remanded to its former place on the file, and that the principal sudder ameen revise the case, and dispose of it on its merits. The usual order regarding the return of the value of the stamp paper and the appellant's costs to apply. The respondents, having appeared without being summoned, are to pay their own costs.

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THE 31ST MARCH 1851.

No. 88 of 1848.

*Regular Appeal from a decision passed by Baboo Ram Lochun Ghose Rai Buhadoor, Principal Sudder Ameen of Zillah Nuddea, on the 28th July 1848.*

Nubkissen Mookerjea and others, (Plaintiffs,) Appellants,

*versus*

Issan Chunder Chuckerbutty, Kissun Gopal Bhuttacharge, Bissessur Bhuttacharge and others, (Defendants,) Respondents.

THE plaintiff, who is now the appellant, has sued to recover from the defendants, or any of them, the sum of Company's rupees 508,

annas 5, gundahs 19, cowree 1, on account of having been made to pay rent of lands occupied by him, twice over under the following circumstances:

Issan Chuckerbutty has a jumma in mouza Puttee Kandoo, 51 beegahs of which were cultivated by the plaintiff in the name of his servant, Mohesh Chunder Odhicaree. The Bhuttachargees (defendants) took the village in putnee and turned out Issan Chunder Chuckerbutty, and from 1242 to 1244 they received the the rent for the 51 beegahs from the plaintiff, and they also obtained summary decrees against him, which he had to pay including costs and interest. Issan Chuckerbutty afterwards sued the Bhuttachargees for the lands, and obtained a decree for possession, and then prosecuted the Bhuttachargees, including the plaintiff, for the mesne profits for the three years that he was kept out of possession, and obtained a decree. In this way the plaintiff has been made to pay rent twice over for the same lands. He, therefore, sued to have the money he paid twice refunded to him by either the Bhuttachargees, or Issan Chunder Chuckerbutty.

The principal sudder ameen has ruled that as the plaintiff did not sue for the reversal of the summary award within twelve months, nor appeal from the decree granted by the moonsiff at Paneeghatta, he has now no remedy, and accordingly dismissed his suit. It does not appear from the plaint that the plaintiffs want the reversal of either of the decrees; but a refund of the money from the party who has wrongfully taken the rent from them. This the principal sudder ameen ought to have decided. The Bhuttachargees say that they have not received any money from the plaintiffs for Issan Chunder's jummai lands, but for some other which measures 62 beegahs, 8 cottahs, which was quite distinct. This is very easily proved, if true, and proof should have been taken.

The principal sudder ameen should have gone into evidence of both parties before deciding the case in the summary way in which he has, and as the investigation is incomplete, the decision is defective. Under these circumstances I admit the appeal, and without summoning the respondents, remand the case under the provisions of Clause 2, Section 2, Regulation IX. of 1831 to its former place on the principal sudder ameen's file, with instructions to investigate it with reference to the foregoing remarks, and to decide it on its merits.

The usual order regarding the return of the stamp value to the appellants, and the costs incurred by him to apply.

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THE 31ST MARCH 1851.

No. 95 of 1848.

*Regular Appeal from a decision passed by Baboo Ram Lochun Ghose Rai Buhadoor, Principal Sudder Ameen of Zillah Nuddea, on the 31st July 1848.*

Guddadhur Doobey, (Plaintiff,) Appellant,  
*versus*

Heeroo Singh Rai and others, (Defendants,) Respondents.

THE plaintiff states that Heeroo Singh Rai took three villages in Kutkeennah from two persons, named Pitumbur Chuckerbutty and Ramcoomar Biswas, and that he was the security for three years from 1242 to 1244.

On the 5th of Poos 1247, Pitumbur and Ramcoomar mentioned above, summoned Heeroo Singh, and the plaintiff (appellant) to Meherpore, and settled accounts, when the balance due by Heeroo Singh amounted to Company's rupees 25-6, who, being unable to pay the plaintiff as security, paid the money which he now claims with interest. Heeroo Singh denies being the principal in the transaction: he says it is true the kutkeennah was in his name, and that the plaintiff was ostensibly the security; but that, in reality, the plaintiff was the principal, and he, Heeroo Singh, a servant at 4 rupees per month.

The principal sudder ameen, not satisfied with the evidence adduced by the plaintiff, directed a local enquiry to be made by an ameen, but the plaintiff threw obstacles in the way, and nothing was done.

Heeroo Singh has filed a release granted ostensibly by Guddadhur Doobey to him, drawn out on a stamp paper, valued at 8 rupees, upon which and the evidence of Heeroo Singh's witnesses, the principal sudder ameen has laid some stress in his decision. He has dismissed the plaintiff's suit, because he did not credit his witnesses particularly after the plaintiff would not have the local enquiry made, and I am of opinion he was quite right in doing so.

I am of opinion that the plaintiff knew that if a local investigation had taken place, his being nominally the security would be found out, and he, therefore, opposed it. It is a very uncommon thing for a native, and one of Bengal particularly, to pay at once a sum of money for another without taking any acknowledgment from him, and I am inclined to believe the statement of Heeroo Singh, that he was only a servant in whose name the kutkeennah was benamee, and that the plaintiff, although nominally the security, was, in fact, the principal.

Under these circumstances I see no reason for admitting the appeal nor for summoning the respondents.

Ordered, that the appeal is dismissed, and the principal sudder ameen's decision confirmed.

## ZILLAH PATNA.

PRESENT : R. J. LOUGHNAN, ESQ., JUDGE.

THE 28TH MARCH 1851.

No. 7.

*Appeal from a decision passed by the Second Principal Sudder Ameen,  
Rai Shunkur Loll, on the 19th December 1849.*

Musst. Beebee Kudeerun, Syud Amcer Ali, and others, (Plaintiffs,  
Appellants,

*versus*

Baboo Hurgobind Ghose and others, (Defendants,) Respondents.

SUIT to obtain possession of 37 beegahs, 18 biswas, 1 dhoor of land, appertaining to certain ayma and kharij jumma lands, originally part of the rukba of Kookoonpoora, resumed and settled with plaintiffs, and included by the surveyor within the boundaries of the said resumed ayma and kharij jumma land, laid at rupees 4771-8-1, including the mesne profits.

Defendant having pleaded that the special deputy collector, by whom the ayma and kharij tenures had been decreed liable to resumption and assessment, had passed an order, declaring that the disputed lands were not included in the decree of resumption, and, therefore, the ordinary courts had no jurisdiction in the case. The principal sudder ameen, on the exhibition of poof of the facts, dismissed the suit as not cognizable according to the precedents of the Sudder Court's Decisions of the 4th March, and 10th December 1846, and 17th July 1847.

Appellants' grounds of appeal are that the disputed land was included in the settlement, and the settlement was confirmed by Government before the issue of the order of the special deputy collector by which the lands were defined not to be included in the resumption decree, and that the superintendent of settlement, in his order of the 17th May 1844, declined to give effect to the special deputy collector's and to the special commissioner's orders on that ground; that the order of the special deputy collector is not a decree, and the decree of that officer did not in fact sufficiently define the lands resumed by it; that the decision of the Sudder Dewanny Adawlut, relied on by the principal sudder ameen, are not, therefore, precedents in point in this case; for the order of the special deputy collector,



*in the case of Hurgobind Ghose, petitioner in the special appeal, decided 17th July 1847, though issued after the passing of the resumption decree was prior to the settlement; whereas in this case it followed the settlement and was not given effect to; that these lands were included in the map of the resumed lands by the surveyor according to the boundary laid down under the orders of the superintendent of surveys: and finally, that the settlement of the superintendent of settlements must be given effect to by the courts, otherwise the lands on which the assessment was made being reduced in extent, the proceedings of the revenue authorities in respect to the assessment would virtually be altered contrary to the law, and the injustice would result of one party paying the assessment while another party enjoyed the proceeds of the land.*

The arguments of the appellants are, in my mind, without cogency. For the resumption courts, it has been clearly laid down in the Sudder Court's Decision of the 17th July 1847, have the power of deciding the right to lands disputed by other parties with the holders of the resumed tenure, by defining the limits of the land affected by their decrees: as they have the power of carrying their decrees into effect in the mode prescribed by the Regulations, they must have the power of construing their meaning or passing any order extending to an amendment of the decree, which may be necessary to render it capable of being carried into effect. Indeed this principle is to be clearly inferred from the above cited decision of the Sudder Dewanny Adawlut, because the order of the special deputy collector in that case was passed after the decree. In this case the resumption court, having the power, has decided the question of the right to the disputed land. It has decided it to be with the party who is now in possession. The plaintiff might sue for the possession of any land on the ground of this decision as the proof of his title to it; but the object of this suit is, on the contrary, to obtain possession of land which the resumption court has declared not liable to settlement as having been already assessed and being the property of another party, but which, contrary to the decision of the special deputy collector, the superintendent of settlements, under the pretext of carrying the decree into effect, persisted in assessing and settling with a party declared by the decree to have no right; but says the appellant the decisions of the special deputy collector and special commissioner have not been carried into effect, in other words are nullities; but the subordinate court, carrying the decisions of the appellate court into effect, can never have the power of nullifying them; and the civil court could not, therefore, treat its order, nullifying the order of the Superior Court as proof of the title of the plaintiff, and carry it into effect. The argument of appellants respecting the injustice of leaving the land in possession of defendant, while plaintiffs paid the revenue assessed upon it, would apply equally to the case of defendants

where they dispossessed by a decree of the civil court, for according to the decisions of the special deputy collector and commissioner, they have been paying revenue for the lands since the settlement of their estate. If then a double assessment is paid for these lands, that fact may be a good ground for an application to the revenue authorities, and eventually to the Government for a modification of the settlement, but cannot be recognized as any for this suit. No reason having been shown for interfering with the decision, it is hereby confirmed, and the appeal dismissed.

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## ZILLAH RUNGPORE.

PRESENT: T. WYATT, ESQ., JUDGE.

THE 6TH MARCH 1851.

No. 9 of 1849.

*Appeal from the decision of Mr. Thomas, Acting Sudder Ameen, dated the 20th April 1849.*

Ramcoomar Bose and Musst. Shama Soondoree Dossea, and after death of Ramcoomar Bose, Musst. Pudda Buttee Dossea, his wife, (Defendants,) Appellants,

*versus*

Messrs. Busch and Bonnevie, farmers of 14 annas of pergunnah Wareegutchia, (Plaintiffs,) Respondents.

THIS suit was instituted by the respondents as farmers of fourteen annas of pergunnah Wareegutchia, under Regulation V. of 1812, for an increased rent from 1255 B. S. against the appellants and other defendants as ryots holding a jote in joint tenancy, in mouza Bajeet of the above pergunnah. The total jumma of which on increase amounted to rupees 352-1-5-18, assessed on a total rukba of 144 beegahs, 18 cottahs, after deducting from which, 2 annas of the rukba, viz., 18 beegahs,  $2\frac{1}{4}$  cottahs, there remained to the plaintiffs 126 beegahs, 16 cottahs, liable to an yearly assessment of rupees 308-1-3-10.

None of the defendants answered to the suit.

On an *ex-parte* trial, a decree, with costs, was given for rupees 267-15-10 $\frac{1}{2}$  as assessable on 122 beegahs, 14 cottahs, agreeably to a roedad of a temporary ameen against all the defendants.

It is urged, on appeal, that the appellants hold no lands as ryots in the village of Bajeet, nor did the plaintiffs adduce any written proof in support of their claim against them; moreover, that Mr. Busch, one of the plaintiffs, had returned to England and died, leaving by will an executor who had appointed an attorney, of which fact no proof had been called for, and that they (appellants) having only been included in the suit by way of form, owing to their being joint proprietors of pergunnah Wareegutchia to the extent of 2 annas had not pleaded to the action, adding that, on Mr. Bonnevie summarily suing them with other ryots for balance of rent, they were exempted in the decree from liability.

Since it appears that the appellants, as two of the defendants to the original suit, failed to appear to the action, the appeal must, under the Court's Circular of the 12th March 1841, be dismissed, and the decision of the lower court confirmed.

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THE 6TH MARCH 1851.

No. 10 of 1849.

*Appeal from the decision of Mr. Thomas, Acting Sudder Ameen, dated  
20th April 1849.*

Musst. Aina Beebee, wife of Mashoom Sirkar, deceased,  
(Defendant,) Appellant with others,

*versus*

Messrs. Busch and Bonnevie, farmers of 14 annas of Warcegutcha,  
(Plaintiffs,) Respondents.

THIS is only a separate appeal instituted from the decision of the 20th April 1849, in appeal case No. 9 of 1849, above recited and dismissed, and as the same reason for dismissal applies to this appeal, it is accordingly dismissed, and the order of the lower court affirmed.

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# ZILLAH SARUN.

PRESENT : H. V. HATHORN, ESQ., JUDGE.

THE 11TH MARCH 1851.

No. 6 of 1848.

*Regular Appeal from a decision passed by Moulvee Mahomed Rafiq,  
late Principal Sudder Ameen of Sarun, dated 14th February 1848.*

Kishnanund, (Defendant,) Appellant,

*versus*

1, Moha Singh, and 2, Girdharry, heirs of Munnoo Singh,  
(Plaintiffs,) Respondents.

CLAIM, Company's rupees 2408 annas 11 pie 6, being the balance of account, including interest and exchange on a deed of assignment dated 1st September 1838, (27th Bhadoon 1245 Fusly.)

This counter-claim (*vide* case No. 13) is for the balance of the assignment deed (dated 15th Chyte 1242 Fusly,) viz., Sicca rupees 2263, with interest and exchange, after deducting certain alleged payments.

Thus, balance of loan, .....	2263	0	0
Interest, .....	1150	13	6
Exchange in Company's rupees, .....	227	9	0
	<hr/>		
Total, .....	3641	6	6
Payments, .....	1232	11	0
	<hr/>		
Balance Company's rupees, .....	2408	11	6
	<hr/>		

The principal sudder ameen has decreed this claim in favor of plaintiffs, (defendants in former case,) upon the assumed fact that the possession of defendant and liquidation of their claim from the rents as stipulated in the last deed of assignment was not proved, and, therefore, they were entitled to the balance (Sicca rupees 2263) of the former deed of assignment, dated 15th Chyte 1242, (admitted by Kishnanund,) and entered as due by him in the subsequent deed of assignment, dated 27th Bhadoon 1245 Fusly, deducting the payment of Company's rupees 1232, annas 11, admitted by the adverse parties. I am referred to the foregoing case for the grounds of this decision; but after an assignment of lands (to wit

the fractional share of the village of Mouna) admitted to have been made for the payment of this debt, it must be satisfactorily proved by plaintiffs, that in consequence of not obtaining possession of the land so assigned, the debt remained unliquidated; now this point has not been satisfactorily established by either party. If they, the plaintiffs (in this case) did not obtain possession of this fractional share as set forth, after the execution of the deed in 1838, (1245 Fusly,) how is that up to the period of instituting this suit (viz., for eight years) they did not either sue for possession or for payment of the balance of this claim. The adverse party urges that they (plaintiffs) not only obtained possession, but have repaid themselves in full from the rents. This point has not been sufficiently investigated; where the oral evidence of the witnesses is contradictory, other proofs should have been required by the court. I therefore reverse this decision of the principal sudder ameen, and return the case for retrial, but still would suggest to the parties that they should, if possible, adjust their differences by *arbitration*, which is preferable to amercing each other in costs of suit.

#### ORDERED,

That this appeal be decreed, with refund of stamp duty, and the case be sent back to the principal sudder ameen's court with No. 13, for further investigation.

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THE 11TH MARCH 1851.

No. 13 of 1848.

*Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late ex-officio Sudder Ameen of Sarun, dated 14th February 1848.*

Kishnanund, (Plaintiff,) Appellant,

*versus*

1, Moha Singh, and 2, Girdharry Singh, sons of Munnoo Singh,  
(Defendants,) Respondents.

CLAIM, Company's rupees 737 anna 1, being the principal, interest and exchange on account of excess collections made from the village of Mouna, pergunnah Mangee, in possession of defendants, under a deed of assignment, dated 27th Bhadoon 1245 Fusly.

This suit was instituted on the 9th November 1846 (or 6th Aughun 1254 Fusly.) It was set forth by plaintiff that there had been money transactions in years past between his ancestor, and the ancestor of Mohen Singh, and that as far back as 1832, he had assigned for the term of ten years 1239-1248 Fusly, 99 beegahs 14 cottahs of land in Mouna (of which he was a 4 anna malik) in discharge of a loan of Sicca rupees 1600, due to Moha Singh, the brother-in-law of Mohen Singh; that afterwards, viz., on 15th Chyte 1242 Fusly, (or 1835) he had executed a fresh deed of assignment

of his entire 4 annas share for the liquidation of his debt then

Viz : To Goodree,...	101	0	0
" Roopun,.....	350	0	0
" Koober, .....	500	0	0
" Mohen Sing, ..	737	14	6
" Miscellaneous expenses, ...	1161	1	6
" Balance of former loan, }			
Total Sa. Rs. ....	2850	0	0

brother-in-law of Moha Singh,) and subsequently a third deed of assignment on the same property from 1246 Fusly to 1256 Fusly was executed by plaintiff, dated 27th Bhadoon 1245 Fusly, (1st September 1838) for the liquidation of Sicca rupees 4201, also

To Rameshur, .....	199	0	0
" Choramun, .....	75	0	0
" Goodree, .....	100	0	0
" Heirs of Mohen Sing on account of loan on the village of Dumarsund, }	1564	0	0
Balance of former deed of assignment, }	2263	0	0
	4201	0	0

Sa. Rs.	
825	
2075	
2805	10
5705	10

computed as the amount

Due { By plaintiff, 5705	10
{ By Deft. ... 5264	7
Balance in Plff.'s favor, }	441 3 0
Interest .....	165 4 0
Do. on Sa. Rs. 1,075	84 10 0
Exchange in Co.'s Rs.	46 0 0
Total claim, Co.'s Rs.	737 1 0

dated 27th Bhadoon 1245 Fusly, but urge that in consequence of the non-payment by them of the former liens due to the peshgidars (or farmers in advances) plaintiff did not give them (defendants,) possession of his 4 annas' share, and that after liquidating small sums on account of interest plaintiff stopped payment *in toto*, which had

amounting to Sicca rupees 2850, including a balance of rupees 1061, due on account of the former loan, in which a stipulation was made that the farmers were to pay off certain other farmers in advance, and other expenses as detailed in the margin.

This second deed was in the name of Moha and Munnoo Singh (another brother-in-law of Moha Singh,) and subsequently a third deed of assignment on the same property from 1246 Fusly to 1256 Fusly was executed by plaintiff, dated 27th Bhadoon 1245 Fusly, (1st September 1838) for the liquidation of Sicca rupees 4201, also noted in the margin, which, with Company's rupees 1063, 7 annas, on account of interest, forms the total amount due by plaintiff to defendants, total Company's rupees 5264 annas 7.

Against this sum it is alleged that the sum of Company's rupees 5705-10 is due by defendants as per margin, viz: Sicca rupees 825, on account of sums due to former tidadars in advance unliquidated by defendants as agreed, Sicca rupees 2075 paid by plaintiff to heirs of Mohen Singh, on account of mouza Domursund (by adjustment,) failing payment by defendant of Sicca rupees 1564, as per former deed, and Sicca rupees 2805-10,

collections of the village Mouna, realized by defendant from 1246 to 1250 Fusly, making a total of Sicca rupees 5705-10. The difference between these sums, with interest, and exchange into Company's rupees is the present cause of action.

Defendants, Moha Singh and the heir (Munnoo Singh,) admit the execution of these several deeds of assignment, including the latter,



obliged them to sue separately (*vide* next case No. 6) for the balance of the second deed of assignment, dated 15th Chyete 1242 Fusly, with interest after deducting certain payments.

Plaintiff observes, in reply, that if possession was not given as alleged, why have defendants remained so long satisfied without preferring any claim to realize their dues?

The sudder ameen, after calling upon the parties for their several proofs, in support of their respective allegations, held that the plaintiff had failed to establish his claim, and for the following reasons—that if, as admitted by *both parties*, the lien due to the former farmers was not paid by either plaintiff or defendants. It is clear they would not willingly relinquish possession of the farm in favor of defendants, the new farmers; that although the parties set forth that the old farmers are thus still unpaid, and of course continue in possession, witnesses are adduced to prove that defendants held possession from 1239 to 1250 Fusly, which evidence cannot be considered trustworthy. The sudder ameen concludes by stating that fact of defendants holding possession during the above term of years is not proved, noticing that the village putwarry even had not been cited as a witness, and for these reasons dismisses the claim of plaintiff, with costs.

#### JUDGMENT.

The point at issue in this case seems to be, *first*, whether defendants held possession of the farm or not during the period of the assignment made for the liquidation of plaintiff's debt? and if so—*secondly*, whether defendants have conformed to the terms of the lease by paying off the former peshgidars? and *thirdly*, whether plaintiff is justified in bringing forward this action for an adjustment of accounts *before* the expiration of the lease?

The fact of possession is attempted to be proved only by oral evidence. Of eight witnesses produced by plaintiff in support of this material point at issue, I observe that there is one who styles himself the *tehsildar* of Moha and Munnoo Singh, defendants, and seven cultivators, who all speak to the possession of Moha Singh and Munnoo Singh from 1239 to 1250 Fusly. Opposed to this, defendants produce but three witnesses, who swear to the possession of Kishnanund, the plaintiff, derived from a conversation which took place in their presence between Kishnanund and Moha Singh in regard to the point of possession, in which the former is alleged to have alluded to the non-payment of the peshgidars as his reason for not giving possession. There are also four witnesses in the counter case No. 6, (following) who have deposed to the possession of defendants, and five who swear to the possession of plaintiff. In the midst of such conflicting testimony little reliance can be placed upon these witnesses, and nothing is offered in corroboration; strange to say no putwarry or gomashtha or other persons directly employed in making the collections are cited in this case, or any receipts of

the collectors in proof of payment to either one or the other, are presented; or any Government receipts or abstracts from the "seeah" books of the collectorate, with a view to ascertain by whom the revenue was paid during the period under review. Thus the point at issue in regard to *possession* from 1246 to 1256 Fusly, *has not been thoroughly enquired into*, and the *onus* of proof falls upon the plaintiff, as defendants deny having received possession. With regard to the second point (the non-payment of the peshgidars) this is admitted by defendants, but their liability to pay depended upon their having obtained possession which they deny, and which is not yet proved either one way or the other. The last point appears to have been overlooked by the lower court. The lease dated 27th Bhadoon 1245 Fusly was to run from 1246 to 1256 Fusly, and it was stipulated in the agreement that any claim on the part of plaintiff, upon the gross collections of his 4 annas share *before the expiration of the lease* would not be cognizable by the courts, and yet this suit for excess collections was instituted in Aughun 1254 Fusly, in violation of the terms of the contract; I think that the sudder ameen has been premature in rejecting this claim, and decreeing the counter-claim without having clearly established the fact of possession during the period of the lease by unimpeachable evidence, and documentary proofs, which might certainly have been obtained. The evidence of the principal cultivators as well as the village putwarry and gomashitas should have been taken, and the receipts called for and examined, both as to payment of rent and revenue during the period under review, and for this purpose I am compelled to return the case for re-trial, nevertheless I would recommend the parties in this case to adjust their difference, if possible, by arbitration.

#### ORDERED,

That this appeal be decreed, and the decision of the lower court be annulled, with refund of stamp duty, and this case be returned to the principal sudder ameen's court for further investigation along with case No. 6.

THE 14TH MARCH 1851.

No. 1 of 1850.

*Regular Appeal from a decision passed by Moulvee Mahomed Waheed-ooddeen, late Moonsiff of Chupra, dated 6th December 1849.*

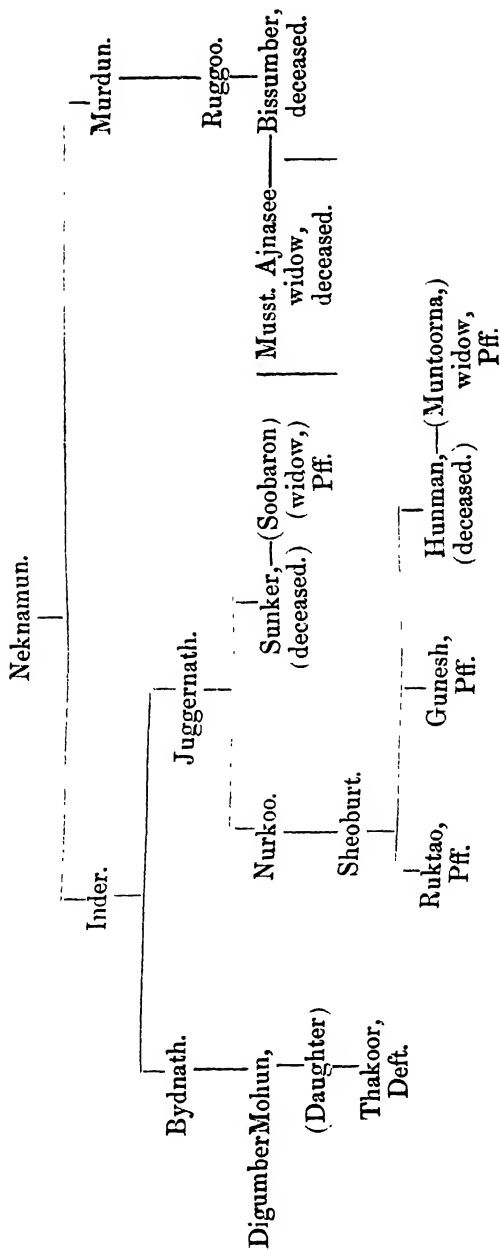
Thakoor Pandey, (Defendant,) Appellant,

versus

Ruktoo Pandey, Gunesh Pandey, Musst. Muntoorna, (widow of Hunman,) and Musst. Soobaron Koer, (widow of Sunker,) (Plaintiffs,) Respondents.

CLAIM, for possession of an 1 anna share of jujman fees styled "lite birt prohitan," in Doulutgunge, &c., eleven villages in pergunnah Mancee, by succession appertained to the share of Musst. Ajnasee Koer, deceased, widow of Bissember Koer; valuation Company's rupees 63, at Company's rupees 3-8 per mensem.

This suit was instituted on the 6th July 1848. It appears that one half pie share of this claim was originally decreed by the sudder ameen of Chupra on 5th May 1842; but, in appeal, the suit was sent back for re-trial on the 17th September 1842, observing that there was a mixed claim of both heirship and adoption, which had not been sufficiently enquired into. The share above mentioned was again decreed in favor of plaintiff by the moonsiff on 8th August 1843, and nonsuited by the principal sudder ameen, in appeal, on the 27th February 1844, as it did not involve the whole claim in dispute. This suit was accordingly reinstituted, claiming the entire 1 anna share as above mentioned. The following genealogical table exhibits the relative position of the parties to this suit with reference to the deceased Musst. Ajnasee, a portion of whose heritable rights are under litigation.



Neknamun, the common ancestor of both parties, is stated to have been one of the acknowledged *prohits* of the above villages, whose share of fees for the performance of religious ceremonies amounted to one-fourth. Plaintiffs, the heirs of Juggurnath, and defendant, the grandson of Mohen *by a daughter*, are said to be in undisputed possession of an 1 anna share each of these fees, and the remaining 2 annas share, which is admitted to have descended to Musst. Ajnasee, (now deceased,) is in dispute. Plaintiffs claim the whole share, denying the right of defendant to succeed, being the grandson of Mohen *by a daughter*; whereas they (plaintiffs) are the grandsons and widows of grandsons, heirs of Inder Pandey in lineal descent.

Defendant maintains that by the law of inheritance his right cannot be questioned; he, moreover, asserts that Mohen Pandey relinquished his whole property in his favor by a deed of gift, dated 7th February 1820. Mohen, however, never succeeded to Musst. Ajnasee's share in litigation, having died previously.

The moonsiff decrees in favor of plaintiffs upon the ground that sons in lineal descent are preferable to a daughter's son. He further considers the act of adoption to be not proved, and argues that if Thakoor was Mohen Pandey's rightful heir, there was no necessity for the transfer of his property by a deed of gift, which he accordingly lays aside and decrees in favor of plaintiffs, with interest and costs as usual. Defendants appeal in dissatisfaction.

#### JUDGMENT.

The point at issue in this case seems to be who are the legal heirs, and as such entitled to succeed to the ancestral rights of Musst. Ajnasee; with a view to ascertain this point it must first be enquired into whether the defendant being a daughter's son in the fourth degree has any legal claim to participate in ancestral rights left by a husband's widow (who died without issue) along with plaintiffs, who are sons in the fourth degree, the claim of the widows of grandsons and great grandsons in lineal descent will again depend upon their husbands' having obtained possession of their share; otherwise their position will be the same as him who is descended from a daughter; secondly, is the position of defendant in any way affected, if proved, to be the *adopted* son of Mohen Pandey, his maternal grandfather? thirdly, is the office of "*prohit*" amongst Hindoos, according to the Benares school (which governs the decisions of such cases in this district) heritable without the consent of *ujmans*; and are its emoluments devisable amongst heirs, the same as other ancestral property?

For a proper solution of these points a reference to the divisional pundit is necessary; the bywusta filed with the record does not embrace the exact point at issue; the question proposed was restricted to whether an adopted grandson could succeed to his grand-uncle's property; but the moonsiff states that the act of adoption by

Mohen Pandey is not proved. The defendant, however, rests his plea also upon being an heir to Musst. Ajnasee, which, he says, plaintiffs (in a petition dated 3rd April 1844,) admitted, as well as being the adopted son of Mohen Pandey; and as plaintiffs dispute his right to inherit being a son's daughter, that question should have been referred to the divisional pundit, furnishing copy of the family tree or record (which I observe is not disputed by either party.) The moonsiff may be correct in his own opinion as to the line of succession, though the right of widows to succeed to ancestral property left by a person dying without issue seems doubtful, he is at any rate required by the Regulations in disputed points on Hindoo law to be guided by the bywusta of the divisional pundit, and for the above reasons I consider this decision of the moonsiff imperfect, and I am again compelled to return this case for re-investigation. The sudder ameen and moonsiff of Chupra, if unable to effect an amicable adjustment between the parties, will, after calling for a "bywusta" from the pundit of the Behar circle, with reference to the length of time that this case has been pending before the courts, take it up at once, and dispose of it without further delay.

#### ORDERED,

That this appeal be decreed with refund of stamp duty, and the case be sent back for re-trial.

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THE 14TH MARCH 1851.

No. 36 of 1849.

*Regular Appeal from a decision passed by Moulvee Mahomed Waheedood-deen, late Moonsiff of Chupra, dated 9th November 1849.*

Isreepershad Opadca, (Plaintiff,) Appellant,

*versus*

Ameen Allee, (Defendant,) Respondent.

CLAIM, for confirmation of right to possession of a plot of land  $12\frac{1}{2}$  cubits by  $5\frac{1}{2}$ , situated in Ruttonpoora, and reversal of an order by the criminal authorities upholding possession of defendant, dated 10th January 1849.

This suit was instituted on the 6th March 1849: it appears that the moonsiff went to the spot, and found that the land claimed by plaintiff appertained to the house and land purchased by Ameen Allee, (the defendant,) from Nukched, by a bill of sale dated 6th March 1829, and which was eventually confirmed by a decree of court, dated 21st March 1836. The plaintiff rests his proof upon the

evidence of six witnesses, adducing no documentary proof in support of his claim, and the evidence referred to merely alludes to plaintiff having formerly placed his carts on the vacant spot without hindrance. This is insufficient. I see no reason to interfere with the moonsiff's decision rejecting plaintiff's claim, plaintiff has failed to prove that he possesses any proprietary right in the land, indeed his brick dwelling-house (according to the maps filed) is situated on the opposite side of the road, and although plaintiff has a "zenana" apartment on the same side of the road with defendant, still another house *intervenies* between that and the piece of land claimed, and which was purchased by defendant, and in which his brother Kheirat Hosein and Kifayut Allee now reside. I observe, however, that the moonsiff has ordered a *fine* of ten rupees to be levied from plaintiff for having brought forward a vexatious complaint, I remit this fine, seeing no sufficient grounds for believing that this suit was instituted from motives of enmity or other vexatious cause; I think there was a *bonâ fide* presumption of right entertained, and no wilful attempt to acquire possession of another man's property.

#### ORDERED,

That this appeal be dismissed, with costs, and the moonsiff's decision be affirmed, and the fine imposed be remitted.

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THE 24TH MARCH 1851.

No. 5 of 1850.

*Regular Appeal from a decision passed by Moulvee Mahomed Waheed-oodeen, late Moonsiff of Chupra, dated 10th December 1849.*

Degumberpershad, (Defendant,) Appellant,

*versus*

Janki, (Plaintiff,) Respondent.

CLAIM, Company's rupees 65-13 annas 3 pie, being the principal and interest, due on an account current.

A previous claim was instituted under date 2nd March 1846 by Doorgbijai Saho, the father of plaintiff, for Company's rupees 62-6-3, and nonsuited by a former moonsiff, (Asud Allee) on 20th July following, for omitting an item of rupees 3-7 let off, and thereby, (as it was assumed,) reducing the claim to an amount less than rupees 64, by which 4 rupees stamp was saved. No appeal was preferred against this order. The present suit was re-instituted on the 26th February 1849, with an additional claim of rupees 15 borrowed after the former account had been closed,

upon which the claim was preferred, but before the first suit was instituted.

The particulars of the amount claimed are as follows :

Co.'s Rs.			Co.'s Rs.		
Dr. 50	7	6	Principal,	40	0 0 Cr.
29	8	0	Interest,		
15	0	0	(Above referred,)	54	15 6
				54	15 6 Interest.
<hr/>	<hr/>	<hr/>		<hr/>	<hr/>
94	15	6		109	15 0
				<hr/>	<hr/>
				25	0 0 Paid.
				19	1 9 Interest.
				<hr/>	<hr/>
				65	13 3 Balance.

Defendant admits having had money transaction with plaintiff's father, but objects to two items in the account, viz., the additional loan of 15 rupees said to have been taken on his account by his brother Ruggionathpershad, and the credit of rupees 25, denying that the 15 rupees was ever borrowed, and if so, that it would have appeared in the former suit, and urging that rupees 50 was paid, viz. 25 rupees as exhibited in the plaintiff's khatabuhee and 25 rupees as per separate receipts.

Plaintiff avers that the 15 rupees was duly paid, and that the 25 rupees was first taken on the 14th Assin 1244 Fusly *Buddee*, and duly entered in the book, and the second 25 rupees was borrowed on the 14th Assin 1244 Fusly *Soodee*, and for which a separate receipt was granted.

The moonsiff has decreed in favor of plaintiff for the reduced sum of Company's rupees 62-6-3 (deducting 3 rupees, 7 annas) admitted in the former case to have been left off, but recharged in the present suit, with interest as usual to date of liquidation.

#### JUDGMENT.

The appeal is preferred on the above two points at issue, I have first to notice that the grounds of nonsuit in the first instance were insufficient: plaintiff was at liberty to forego a part of his claim to save law expenses, or for any other cause, and the penalty is, that he could not afterwards claim that which he had relinquished in his first suit. I observe that the item of 15 rupees is duly entered in plaintiff's account current as paid to the defendant through Ruggonath his brother, and the item could not have been entered in the former account as it was borrowed in Jyte, and the account closed in Bysak 1244 Fussily; and there is no reason to doubt the correctness of the extract exhibited; and as respects the disputed 25 rupees, I concur with the moonsiff in believing that the receipt



and entry refer to the same item, and the insertion of *Buddee* in one and *Soodde* in the other was a clerical error, which is sought to be taken advantage of, and for this reason that the amount, the date, and month and year, the name of the payee (Benipershad) all correspond. For the above reasons, I am of opinion that the decree of the lower court should be confirmed.

ORDERED,

That this appeal be dismissed, with costs, and the decision of the moonsiff be affirmed.

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## ZILLAH SYLHET.

PRESENT: F. SKIPWITH, Esq., OFFICIATING JUDGE.

THE 4TH MARCH 1851.

No. 38 of 1851.

*Appeal from the decision of Baboo Ramtaruck Rai, Moonsiff of Lushkerpore, dated 31st December 1850.*

Choramoonce Acharj and Ruttunmonce Acharj, Appellants,

*versus*

Mujeed Oollah, Respondent.

THE appellants claimed rent for some land occupied by the respondent in the years 1254 and 1255, agreeably to a kubooleut executed by him to the respondent.

The respondent admits that the land is in his possession, but pleads that he holds it in fee simple, and he denies that he has ever paid rent to the appellants or executed a kubooleut to them.

The moonsiff decided the case on the 13th July 1850, but it was returned to him on the 2nd of September last to ascertain whether the respondent had paid rent for 1252 and 1253. This was done, and in his present decision, the moonsiff observes that there is no evidence of rent having been paid in those years, for that he cannot believe the evidence of Suleemoollah, Amjud and others, who say that in lieu of rent the respondent sold to the appellants a cow and calf, because, had this been so, the appellants would have mentioned the circumstance in his rejoinder when he mentioned the date of the kubooleut alluded to in his plaint. The kubooleut which is dated the 4th Jeyt 1252, he considers irrelevant to the present claims for rent for 1254-55, as that is for one year only. He, therefore, dismissed the suit.

The appellant urges that the kubooleut is duly proved that the payment of rent for the years 1252 and 1253, is established by the evidence of Sumboonath and Prankishen besides the witnesses mentioned above. That his right to the land and the occupation of it by the respondent are proved, and that Radachurn, Tarachund and Suleemoollah have proved his promise to pay rent for 1254 and 1255.

## JUDGMENT.

Several witnesses have deposed to the execution of the kubooleut, but I place no credit upon their assertions, as the appellants omitted to mention the date of the kubooleut in his plaint, which he would have done had it then been in existence. It is, moreover, unimportant as to the present claim, if true. It is executed for the year 1252, and the rent claimed is for 1254 and 1255. For the reasons stated by the moonsiff, I discredit the evidence of Amjud and others as to the selling the cow in lieu of rent, and the evidence of Sumboonath and Prankishen is insufficient. Prankishen says that about five, six, or seven years ago he knows that the respondent borrowed money from Sumboonath and paid 3 rupees rent to the appellants; but he cannot state the precise year, nor can he recollect how much money he took from Sumboonath, nor whether one or both of the appellants signed the receipt. Sumboonath states that in 1252 he borrowed 7 rupees, 2 annas of him upon a written document, and paid 3 rupees of it to the appellants, but he afterwards said that he stated he intended to pay.

Radachurn and Taramonee say that on asking the respondent why he did not pay rent for 1254 and 1255, he admitted the justice of the claim, and that he intended to pay, but they assign no reason as given by him for not paying on demand. I therefore dismiss the appeal, and confirm the moonsiff's decision.

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THE 7TH MARCH 1851.

No. 39 of 1851.

*Appeal from the decision of Baboo Chunder Kishore Roy, Moonsiff of Hingajeeah, dated 26th December 1850.*

Musst. Surrée Dossee and Hoolasram Deb, Appellants,

*versus*

Prankishen, Respondent.

THE respondent sued for rupees 50-4-2, being the value of a bond with interest, executed by Musst. Surrée Dossee on her security Hoolasram, dated 18th Bysack 1253.

Musst. Surrée Dossee says that she is a servant of the respondent and has sued him for her wages; that she signed a document relative to her service, but has never given the bond, the subject of the present suit. Hoolasram says he became security for the other appellant on her entering the respondent's service, but denies all knowledge of the bond.

The moonsiff considered the execution of the bond and the payment of the money to Sursuttee on the security of Hoolasram proved, and further that the appellant Sursuttee is a servant in the

respondent's house. The set of an account of wages he would not allow, as a separate action had been brought by Sursuttee for them, and which she had allowed to go by default. He therefore decreed the amount claimed.

The appellants urge in appeal that Sursuttee sold herself as a slave to the respondent for rupees 35; but that she never executed the bond filed by him. They further plead that the bond is not proved as the witnesses have contradicted themselves.

The plea of slavery is repugnant to the plea of service and to the claim for wages urged by the appellant in the moonsiff's court and is inadmissible. The second plea is incorrect. I have carefully examined the depositions of the witnesses, and can find no discrepancies in them, and they are beside borne out by the appellants' witnesses, who say they know that Sursuttee is a servant in respondent's house, and that they have heard she borrowed some money from him. The writer of the bond cited by the appellant says he wrote the bond for rupees 35, but only saw rupees 24 paid; but in opposition to him, the witnesses to the bond say the full sum entered was given. The appeal, therefore, is dismissed, and the moonsiff's decision confirmed.

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THE 7TH MARCH 1851.

No. 49 of 1851.

*Appeal from the decision of Baboo Hergouree Bose, Moonsiff of Rusool-gunge, dated 30th December 1850.*

Mahomed Zuckee, Appellant,  
*versus*

Mahomed Kadcem and others, Respondents.

THE respondents sued for possession of 1 koolba, 9 kear, 6 jut, 2 reg of land, with mesne profits. The appellant filed an answer, but the moonsiff decided the suit under a deed of relinquishment filed by the respondents' vakeels.

The respondents appealed, urging that they had never executed the vakalutnamah under which the deed of relinquishment was filed. On the 7th of March 1850, the moonsiff's decision was reversed, and the case was returned that he might enquire into the execution of the vakalutnamah.

The respondents denied *in toto* the execution of the vakalutnamah, and the moonsiff took evidence to its execution, and after hearing all the evidence brought forward by the parties, decided that the vakalutnamah was not satisfactorily proved to have been executed by the respondents, and he, therefore, rejected the deed of relinquishment filed under it.

From this decision the appeal is now presented and the appellant urges that it has been duly proved to have been executed by the respondents, and acknowledged to be their act and deed before the

cazee of Russoolgunge in the presence of certain witnesses; but that these witnesses have not been examined.

### JUDGMENT.

On examination of the record shows this to be true, but that they were not examined was the fault of the appellant who was called upon by the moonsiff to prove the execution of the vakalutnamah, but he took no steps to procure their attendance.

The vakalutnamah was tested by the cazee of Russoolgunge, in the presence of witnesses who deposed on oath that the signatures affixed to it were subscribed by the respondents; but it does not appear that either of the five respondents was present. It is also insufficient for the purpose for which it is pretended to have been executed and under which the vakeels appointed by it acted. It gives them the power to file a deed of relinquishment on their behalf, but it does not expressly give them the power of writing it, nor does it contain any instructions for them to write one. Their preparing one, therefore, under such a document, is illegal. The cazee, moreover, has no power to test a vakalutnamah at all, and the document therefore is useless. Under these circumstances I confirm the moonsiff's decision, and dismiss the appeal.

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THE 10TH MARCH 1851.

No. 43 of 1851.

*Appeal from the decision of Baboo Hergouree Ghose, Moonsiff of Russoolgunge, dated 27th December 1850.*

Kurecm Khan, Appellant,

*versus*

Mahomed Morad *alias* Morad Mundul and others, Respondents.

THE respondents sued to obtain possession of 3 koolba, 11 kear, 5 jut of land, with mesne profits, under the following circumstances:

He states that a rent-free tenure called Jumsheer, No. 51, was sold in execution of a decree of the court and was purchased by him, and that it consisted of 3 koolba, 11 kear, 5 jut of land; but that the ameen deputed by the court only gave him possession of 3 koolba, 2 kear, 2 jut, 2 reg; that the land was afterwards resumed, and that the deputy collector made a settlement with him for 3 koolba, 7 kear, 1 jut; that he occupied this land, and also 4 kear, 3 pao, 4 jut, for which no settlement was made, and that on the 1st Bysack 1250, the appellant forcibly ousted him from the whole.

The appellant denies that the lands claimed by the respondents ever formed part of the rent-free tenure purchased by him; but that it is a part of their talook Jumsheer, No. 164, which they hold

under a decree of the civil judge confirmed on appeal by the provincial court of appeal; that the name of the rent-free tenure is Shumsheer and not Jumsheer, and that respondents' claim is divided, because he has omitted in the end of his plaint to sue for 3 pows of the land asserted by him to have been taken from him.

In his rejoinder the respondent admits that the name of the land is Shumsheer, and he pleads that the estate is recorded in the collector's office as consisting of 3 koolba, 11 kear, 5 jut; but that agreeably to the mofussil papers it consists of 3 kool, 11 kear, 3 pows, 5 jut, and that he has on that account mentioned both statements in his plaint.

The moonsiff deputed an ameen to measure both the rent-free tenure and the talook, and, after a comparison of the boundaries of the land sued for with the chittalis and the deed of settlement of the deputy collector, gave a decree for the respondent.

The appellant urges that under his decree he is entitled to hold 8 koolba, 5 kear of land, and that although it is proved that he holds possession of 7 koolba, 10 kear, 2 paos, 4 jut, 2 reg only, inclusive of the disputed land, yet the moonsiff has taken from him the land sued for. That the respondents have in their rejoinder claimed 3 paos of land, more than is set forth in their plaint, and that the land taken is part of that held by him under the judge's decree.

#### JUDGMENT.

It was unnecessary for the moonsiff to measure the appellant's talook. The only points he had to decide were whether the land sued for formed part of the appellant's decree or not, and if not, whether it was in the possession of the respondent, and was forcibly taken from him by the appellant. The appellant's decree has not been filed, so that the boundaries of the land sued for have not been compared with the boundaries laid down in the decree. The appellant petitioned for time to file the decree which was, he said, among the records in the judge's office; but the moonsiff did not listen to his prayer. The moonsiff has, moreover, omitted to record any distinct opinion as to the forcible dispossession of the respondent by the appellant, and the case therefore must be remanded for re-trial. The appellant's plea that the respondent has by his rejoinder sued for more land than is mentioned in his plaint, must be overruled, because the full amount of the land claimed is entered in the plaint, and the discrepancy noticed by the appellant has been satisfactorily explained in the rejoinder, and it is the duty of the judge to decide the point. For the reason stated above I remand the case for re-trial. The appellant is entitled to receive back the value of his petition of appeal.

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THE 11TH MARCH 1851.

No. 3 of 1850.

*Appeal from the decision of Moulvee Sadut Ally Khan Bahadoor, Principal Sudder Ameen, dated 31st January 1850.*

Lall Beebec, Belaetee Beebee, and Ilum Beebee, Appellants,

versus

Mofuzul Hossein, Respondent.

THE respondent brought an action against Morad Beg and the appellants, to recover from them the sum of rupees 4782-8-9-12, being the principal and interest of a sum advanced on account of a lease of lands, to which lease the appellants being co-sharers with Morad Beg subscribed their names and affixed their seals in token of their assent.

The appellants denied that they had in any manner attested the lease, or received any benefit from it, and the principal sudder ameen releasing them from the claim gave a decree against Morad Beg only. He, however, declared the appellants liable for their own costs of suit, amounting to rupees 261-1-7, as he considered some former suits brought by them against the respondent and Morad Beg to have been instigated by the latter for the purpose of harassing the respondents, and to amend this part of the decree the present appeal has been instituted.

The appellants urge that in former suits relative to the lands in dispute they have denied all knowledge of the lease the subject of the present action; that the respondent was aware of this fact, and that he had, therefore, wrongfully made them parties to the suit.

The respondent filed a reply, declaring the decrees alluded to, to have been collusively obtained, and he urges that appellants and Morad Beg are still living in one house, and that it is proved by the evidence of Ramkishen that Morad Beg is the sole proprietor of the estate.

## JUDGMENT.

There is no evidence to show that the appellants derived any benefit from the lease, or sufficient to prove that they attested it by their seals or signatures, nor is there reason for supposing that the former decrees were obtained collusively for the purpose of harassing the respondent. When Morad Beg, the son, husband and father of the appellants, claimed the whole estate, to part of which the appellants were entitled, it was absolutely necessary for the preservation of their rights to sue him, and the fact of their living together, they being so nearly connected, cannot affect the case. The deposition of Ramkishen, who says Morad Beg is the sole proprietor, is no evidence of collusion, and is opposed to the decrees obtained by the appellants. Having been released by the principal sudder

ameen from the respondent's claim them; appellants are, agreeably to the practice of the courts, entitled to their costs, and I therefore amend the decree, and award costs, with interest from the principal sudder ameen's decree to the date of realization.

THE 12TH MARCH 1851.

No. 2 of 1850.

*Appeal from the decision of Moulree Nazzcer Oodeen, Sudder Ameen, dated 27th August 1850.*

Hurree Churn Surmah and others, Appellants,

*versus*

Sookdebram Ghose, Respondent.

THE appellants sued to obtain possession of certain lands, from which they stated they had been forcibly dispossessed by the respondent in the month of Jyte 1246, under a decision of Regulation XV. of 1824, to which they were not a party.

The respondent pleaded that the date of the appellant's claim must be taken to be the 25th Chyte 1244, the date of their alleged purchase as they had never obtained possession, and that consequently the suit was inadmissible, the period of 12 years having elapsed.

The sudder ameen did not allow the appellants time to reply; but states, in his decision, that it is evident from the pleadings in a former case instituted by some of the appellants for the recovery of the price paid by them for the land, as well as from suits instituted by them for rent, that they have never had possession of the lands, and he, therefore, dismissed their claim as the period of 12 years and one day has elapsed since the date of sale to the date of the institution of the suit.

The appellants urge that if they had been allowed to reply and to file their exhibits they could have proved their possession, and that the cause of action arose in Jyte 1246, and that the suit has consequently been brought within the period of 12 years.

The decision of the sudder ameen is clearly premature. He ought to have allowed the parties to have completed their pleadings, and then have drawn up a proceeding agreeably to Section 10, Regulation XXVI. of 1814, and afterwards to have taken evidence to the point at issue and then decided it. This he has omitted to do, and I, therefore, remand the case.

The appellants are entitled to the value of their stamp.

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THE 24TH MARCH 1851.

No. 46 of 1851.

*Appeal from the decision of Moonshee Ramtaruck Roy, Moonsiff of Lushkerpore, dated 31st December 1850.*

Sheikh Daghoo and another, Appellants,

*versus*

Musst. Koobeenec Dossee, Respondent.

THE respondent sued to set aside a fraudulent sale effected by the father of the appellants to them, with the view of preventing the sale of certain lands in execution of a decree.

The appellants pleaded that their father had sold the land to them in lieu of a claim they had upon him an account of a marriage settlement of their mother, as their possession of the land had been investigated summarily before the moonsiff, he called for the case and examining the exhibits filed therein, replaced the case in his office, and founded his decree upon them.

This was irregular, and I cannot decide the appeal. I therefore return the case to the moonsiff, that he may allow the parties a reasonable time to take back their documents, and file them in this case, and at the expiration of the period that he give his decision *de novo*. The appellants are entitled to the value of their stamp.

THE 25TH MARCH 1851.

No. 13 of 1849.

*Appeal from the decision of Moulree Sadut Ally, Principal Sudder Ameen, dated 12th June 1849.*

Srimutee Sabitrah Dibe and others, Appellants,

*versus*

Doolal Chand and others, Respondents.

THE respondents plead that in mouza Goresunker there are two talooks, which were formerly the property of Gobindram, one No. 254, called Gobindram, with a jumma of rupees 3-9-12, the other No. 212, called Soondersingh Naharsingh, consisting of 5 koolba, 5 kears of land, with a jumma of 1 rupee; that their father Kungal Das purchased the first named talook by three separate deeds and obtained possession: and that the second talook was sold for arrears of revenue and purchased by Ramkanoo, who on taking possession of it ousted him out of 4 koolba, 4 k., 2 p., 5 j., within certain boundaries named by them in their plaint, appertaining to their talook Gobindram, in the month of Phalgun 1244; that their father died in 1248, leaving them his heirs, and they consequently bring this action to obtain possession of the abovementioned lands, together with mesne profit.

The appellant *Sabitrah Dibe*a pleaded that her husband *Brijkishore Soormah*, (who is deceased), never dispossessed the respondents of the lands claimed; that he purchased talooks *Soondersingh* and *Maharsingh*, consisting of 11 k. 11 k. 2 p. 5 j., in mouza *Goresunker*, at a sale for arrears of revenue in the name of *Ramkanoo*, and was put in possession of 8 k. 8 k. of it in the year 1245; that he contemplated bringing an action for the recovery of the remainder of the land but died, leaving her his heir; and that in 1253 the respondents forcibly dispossessed her of the only lands her husband had obtained possession of; that the respondents have not laid down the boundaries of the talook correctly, and have laid their claim for mesne profits at too high a rate.

*Kashenath* (who has not appealed) stated that he bought the talooks *Soondersingh* and *Maharsingh* from *Ramkanoo* in the month of *Srawun* 1253, and obtained possession of a part of it.

The principal sudder ameen, in his proceeding drawn up agreeably to Section 10, Regulation XXVI. of 1814, declares the point to be determined to be "whether the land claimed belongs to talook *Gobindram*, No. 254, or to talook *Soondersingh* and *Maharsingh*, No. 212," and on his final proceeding he observes that the boundaries of the two talooks have never been distinctly laid down, but the two have been held jointly though the boundaries are traceable in certain mofussil documents named in his proceeding, and according to which he decides the land to appertain to talook *Gobindram*. He, therefore, decreed possession of the lands claimed to the respondents agreeably to boundaries laid down in their plaint, and made *Sabitrah Dibe*a and others answerable for mesne profits from the date of dispossession to the 5th of *Srawun* 1253, and *Kasheenath* from that date to the day on which they obtained possession of the lands.

*Musst. Sabitrah Dibe*a urges, in appeal, first, that the two talooks have never been separated, and that the principal sudder ameen has no power to divide them; secondly, that though in certain documents in the collector's office the quantity of lands appertaining to either talook is specified, yet *Gobindram* was the owner of both and occupied them jointly, no legal separation having ever taken place; that the respondents claim lands within certain boundaries recorded in their deeds of sale; but that these deeds are fraudulent, and that the boundaries laid down in them do not agree with the boundaries specified in the *dhole* and other papers according to which the land has been awarded to them; thirdly that they were in 1153 ousted by respondents from the lands they had been put in possession of, and that this fact has not been noticed by the principal sudder ameen; fourthly that the lands are not proved to belong to talook *Gobindram*, and that the ameen deputed to measure the lands was bought over by the respondents, and yet the boundaries laid down by him do not agree with those of the plaint.

The vakeels of the appellant were asked whether they mean to assert that the two talooks in dispute were held in joint occupation at the decennial settlement, and they reply yes, as far as regards mouza Goresunker, though they have discovered since their purchase that although Gobindram held them both jointly he has given in papers showing their lands to be separate, though they have never been legally divided.

#### JUDGMENT.

The decision of the principal sudder ameen does not divide the two estates as by the process of butwarra, but declares that according to certain documents there appear to be recognised boundaries between them; and that by the evidence adduced the lands claimed are proved to have been held as part of Gobindram talook, and that they are included in the boundaries laid down in the deeds of sale. The authenticity of those deeds were not questioned by the appellant in the lower court, and the plea, therefore, of fraud cannot now be entertained. They must be considered to be legal. The plea that the respondent took forcible possession of the lands in 1253 need not be enquired into, as the mesne profits accruing subsequent to that period have been decreed against Kashenath who has not appealed.

The only question therefore is, whether the lands decreed are included within the boundaries of the plaint and belong to talook Gobindram. On this point there can be no doubt but that the decision of the principal sudder ameen is correct. The evidence of both parties proves the boundaries of the lands claimed to be correctly laid down in the plaint, and it is equally clear that they belong to the talook Gobindram, and are included in the boundaries of the deeds of sale. The documents mentioned by the principal sudder ameen establish this fact. The boundaries laid down by the ameen exactly correspond with those of the plaint with one exception. The western boundary of field No. 2, is declared by him to be the road of Rajkister Dhur, whereas in the plaint it is stated to be talook Gobindram. Rajister Dhur succeeded Gobindram as the proprietor of the talook, and the road named evidently runs through the talook. I therefore confirm the decision of the principal sudder ameen, and dismiss the appeal, with costs.

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THE 26TH MARCH 1851.

No. 52 of 1851.

*Appeal from the decision of Baboo Ramtaruck Roy, Moonsiff of Lushkerpore, dated 31st December 1850.*

Oochubram Pal, Appellant,

*versus*

Neeamut Nigavee, Musst. Phubee and others, Respondents.

THE appellant stated that on the 8th Kartick 1254 the respondents gave him a note of hand for rupees 14-14, on account of rent due to him for a house and lands occupied by them agreeably to their kubooleut in mouza Ruttenpore, in talook Mahomed Nazeer No. 1.

The respondents pleaded that they live in mouza Tarapassah, and have never executed either the note of hand, or the kubooleut mentioned in the plaint.

The moonsiff, in his decision, observes that though the witnesses swear to the note of hand their evidence is utterly unworthy of credence, for it is proved that the respondents live in separate houses and occupy different lands, and yet the amount alleged to be due from each is not specified in the note of hand; moreover, the kubooleut was given more than five months after the commencement of the year for which it is pretended to have been executed; that there is a dispute between the owners of talook No. 1 and talook No. 1051, and finally it is proved that the respondents live in mouza Tarapassah and not in Ruttenpore.

The appellant urges, first, that the respondents live in one baree, though they occupy distinct houses, and that they jointly cultivate the lands; secondly, that they used to live in Ruttenpore, but have since gone to Tarapassah; and thirdly, that the note of hand is duly proved.

## JUDGMENT.

For the reasons stated by the moonsiff I consider the evidence in support of the note of hand wholly insufficient, and the witnesses affect an ignorance of the circumstances under which the transaction took place which is very suspicious. The only witness examined on behalf of appellant to prove that the respondents live in Ruttenpore, distinctly asserts that they live in separate houses, and he states that mouza Ruttenpore is situated within mouza Tarapassah. I see no reason to interfere with the moonsiff's decision, and accordingly dismiss the appeal.

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THE 26TH MARCH 1851.

No. 53 of 1851.

*Appeal from Baboo Hergouree Bose, Moonsiff of Russoolgunge, dated  
22nd January 1851.*

Sheikh Kabil, Appellant,

*versus*

Jugermohun Soormah, Respondent.

THIS was an action brought by the respondent for rupees 30-5-1, being the value of a bond, dated the 17th Bysack 1253, with interest.

The appellant pleaded insanity. As the bond was duly proved and the appellant was unable to prove his plea, the moonsiff decreed the case.

The appellant now urges five objections:—

1st. That the proceedings required by Section 10, Regulation XXVI. of 1814 was omitted.

2ndly. That no local investigation was held by an ameen.

3rdly. That no futwa was taken from the law officer in the case.

4thly. That the respondent's witnesses have contradicted themselves.

5thly. That it is proved he was on the date of the bond insane.

#### JUDGMENT.

The first plea is unavailing, for although the case was instituted previous to the publication of Act XV. of 1850, the proceeding was held. The second and third are frivolous, for there is no reason why a local investigation should be held, or a futwa called for. The fourth is unavailing, for the witnesses do not differ upon any material point, and they all swear to the execution of the bond. The fifth plea is incorrect. There is no evidence whatever to show that the appellant was insane when the bond was written, for although he has produced several witnesses to this fact, they only say he was insane one month of Maugh, and recovered the following month of Maugh, but they do not state the year nor any act from which insanity may be inferred. I therefore dismiss the appeal.

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THE 31ST MARCH 1851.

No. 45 of 1851.

*Appeal from Baboo Sharodapershad Ghose, Moonsiff of Ajmereegunge,  
dated 28th December 1850.*

Hurmad Das and others, Appellants,

*versus*

Ramchurn Nag, Respondent.

THE respondent sues to recover rupees 28-7-2, being the amount of rent, with interest, due from the appellants for four years, agreeably to kubooleuts executed by them on the 16th Poos 1252.

The appellants state that Ramparee had a decree against them which he sold to Sheebchurn in Ramchurn's name, and that he apprehended him in the month of Poos 1252, and while in duress took from him the kubooleuts, the ground of the present action, and also a bond the subject of appeal No. 47; but that they do not cultivate any land belonging to the respondent, and that they all swore not to complain against the other.

The respondent replied that they brought Ramparee's decree against the appellants who paid them the sum of rupees 22-10-2-9, and assigned to them land of the value of rupees 50, which, however, they retained in their own occupation, giving them kubooleuts for the same on the 16th Poos 1252, on which date they also gave them a bond for rupees 40, the balance of the decree.

The moonsiff considered the execution of the kubooleuts to have been voluntarily made under the circumstances detailed by the respondent, and gave a decree for the amount claimed.

The appellants urge that the moonsiff did not depute an ameen to hold a local investigation; that the respondents swore on oath not to bring the present claim against them, and that, if Pran Thakoor, the writer of the bond and kubooleut, and one Oodenath had been examined, the result would have been different, and that the claims are absurd, as only 15 rupees remained due for the former decree.

## JUDGMENT.

I can see no reason whatever for holding a local investigation, so that the first plea of the appellant is unavailing. The second, though sworn to by the appellant's witnesses is incredible, for they say Moolukchand alone was present, and yet the other defendants, his brothers, never sued to set aside the documents so taken. Pran Thakoor was not cited by the appellants at all, and though they filed some questions with the view of having Oodenath examined under a commission, he being resident in Benares, they took no steps for issuing it. They have filed no papers to show that 15 rupees only were due under the former decree, which

they would have done had their plea been good. Under these circumstances I see no reason to interfere with the moonsiff's decision. and accordingly confirm it, and dismiss the appeal.

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THE 31ST MARCH 1851.

No. 47 of 1851.

*Appeal from the decision of Baboo Sharodapershad Ghose, Moonsiff of Ajmereegunge, dated 28th December 1850.*

Hurmadas and others, Appellants,

*versus*

Ramchurn Nag and others, Respondents.

THE subject of the present action is the bond for rupees 40, executed on the 16th Poos 1252, under the circumstances detailed in the previous case. The grounds of defence and appeal are precisely similar and need not be repeated. I confirm the moonsiff's decision, and dismiss the appeal.

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## ZILLAH TIRHOOT.

THE HONORABLE ROBERT FORBES, ESQ., JUDGE.

THE 6TH MARCH 1851.

No. 14 of 1850.

*Regular Appeal from a decision of Moulvee Neamut Alee Khan Buhadoor,  
first Principal Sudder Ameen, dated 26th June 1850.*

Musst. Premun, wife of Ram Loll, deceased, and three others, out of  
eight, (Defendants,) Appellants,

*versus*

Pearee Loll, (Plaintiff,) Respondent.

THE plaintiff brought this action to recover the sum of Company's rupees 1451-2-6, and something more, being the principal and interest of collections alleged to have been appropriated in 1251 and 1252 F. S.

The substance of his plaint is that in 1251 F. S., in partnership with Ram Loll, the husband of the defendant, Musst. Premun and Purbhoo Opudhya, the ancestor of three others of the defendants, he took a thika farm of mouza Sultanpore, &c., from Baboo Ramnarain Singh, the mukurercedar; the three sharers having appointed the two defendants, Boonyad Singh and Mahadeo Dutt, as putwarees, and two others of them Gowree Rae and Oodhee Rae as gomashtas, all four of whom were empowered to pay whatever rents they collected into the cootee of the two defendants, Ram Loll and Purbhoo Opudhya, who are mahajuns; that his (plaintiff's) share of the collections was something more than rupees 1935-4-9, out of which his co-sharers had paid rupees 834-14-9 to the malik; and on the latter demanding payment of the balance of the rent he (plaintiff) paid him rupees 1426, from the beginning of 1251 F. S. to the 19th Chyete 1252 F. S., for which he (plaintiff) has got the malik's receipt and wasil-bakee. On his (plaintiff's) demanding the accounts from the putwarees and gomashta, all the other amlah, with the exception of Boonyad Singh, in collusion with the other shareholders, withheld them, the result of which was a summary suit. Afterwards he (plaintiff) had a wasilat, or comparison of collections made by means of the same Boonyad Singh and one Munhurun Loll, putwaree of other two shares, the result of which was that it turned out that altogether something



more than rupees 6408-5-6 had been collected between the periods above stated, deducting from which the amount of village expenses and the shares of his co-partners, his (plaintiff's) share was rupees 1935-4-9, and a little more, the deduction from which of the above sum of rupees 834-14-9, paid to the malik, leave a balance due to him of something more than rupees 1100-6, for the recovery of which, with interest, this suit is instituted.

The defendant, Ram Loll, and the three heirs of Purbhoo Opudhya, denying the justice of the plaintiff's claim, plead that as the plaint does not specify the amount collected in each year, nor give any detail of the description of village expenses, or how much was yearly paid to the malik, and how much of plaintiff's share each year remained due by them (defendants,) the suit is irregular and opposed to Section 3, Regulation IV. of 1793. The jumma khurch account of the amlah shows that from the 19th Kartick 1251 F. S. to 25th Chyete 1252 F. S., only a total of something more than rupees 5999-10-7 was collected, besides which they took by *dust gurdeh*, from different parties mentioned in the jumma-khurch, something more than rupees 3172-11-3, making a grand total of rupees 9,172-5-11, out of which rupees 7819 were paid to the malik for rent, and rupees 1004-9-6 were expended in payment of salaries and miscellaneous matters, leaving something more than rupees 330-0-6, out of which the amlah paid to the plaintiff rupees 100-2: to the defendant Ram Loll rupees 89-12-9, and to the heirs of Purbhoo Opudhya rupees 140-1-9. The plaintiff's suit is, therefore, unworthy of notice, and indeed he (plaintiff) has collected and appropriated a surplus for which they (defendants) were about to sue him, when he got the start of them by bringing this action. Moreover, as the putwarees and gomash-tas are the persons to speak to the actual amount collected, the plaintiff ought not to have made them defendants.

The other four defendants answered in support of their co-defendants, and they prayed to be absolved from responsibility, urging that as they had paid the revenue into the cootce of the defendants, their being included in the suit is unjust. They also represent that the plaintiff on the 3rd of Poos 1252 F. S., for himself and the other sharers appointed Jugmohun Loll as mustowfee, and wrote them (defendants) a letter to make over charge of the papers, which they accordingly did, and that in the summary suit they (defendants) filed the jumma-khurch account. What then becomes of the plea of their (defendants') not having made over charge of the papers?

The principal sudder ameen decreed the suit against the sharers in the first instance, and secondly, against the amlah. He remarked that the plaintiff had given in a receipt written by Purbhoo Opudhya and Ramlohl in attestation of the jumma khurch, which the former had filed, two witnesses having also deposed to the cor-

rectness of that account. The jumma-khurch filed by the two shareholding defendants was not to be relied on, because if it was really genuine, what necessity existed for Ramlohl's summarily suing the putwarce and gomashtha for the papers of 1251 F. S.? It appeared from the jumma-khurch account filed by the plaintiff, and an account made by the court, that in 1251 F. S. rupees 530-13-3, principal, and rupees 174, interest, and in 1252 F. S., rupees 569-8-3, principal, and rupees 176-12-6, interest, or a total for the two years of rupees 1451-2-0, was due to the plaintiff by the defendants after deducting village expenses, the shares of the other partners, and the malik's rent. Proof had not been afforded that the defendants had themselves paid all the malik's rent. If it were really the case that they had done so, how was an entry found in Achumbit Mahtah's books of rupees 749 paid in by the plaintiff Pearcee Lall? if too the latter had not singly paid that money, the payment of it, as in the case of other entries, inserted as paid by Ramlall, &c., would have been similarly inserted as paid by Pearcee Lall, &c. The defendants have furnished no proof in the shape of acknowledgment, to establish their alleged payment of rupees 100-2 to the plaintiff, and respecting the money alleged to have been taken by the amlah by dust gurdeh rupees 541 are found entered as having been so taken from the plaintiff? How then can their story of having paid the plaintiff rupees 100-2 be believed?

The chief grounds of appeal from the above decision are that the plaintiff having sued as defendants the persons who signed the jumma khurch account and who should have been witnesses, has rendered himself liable to be nonsuited, agreeably to the precedent cited in the *Agra Gazette* of the 27th October 1848, *Ramlochlun Goh versus Gooroopershaud Goh*, decided on the 11th of August of that year; that the jumma-khurch account filed by the plaintiff does not bear the signature of their (appellants') ancestors, and the witnesses are persons unconnected; that the plaintiff has not given any proof of having himself paid any rent to the malik, and that their (appellants) jumma-khurch proves the payment to the plaintiff of the rupees 100-2, which is also proved by witnesses, and in the event of the principal sudder ameen disbelieving it, he ought to have caused enquiry to be made by an ameen.

#### JUDGMENT.

In this suit the proceeding according to Section 10, Regulation XXVI. of 1814, commencing with an abstract of the plaint and answer, ends by particularizing the proofs, which each party is required to produce, but determines no issue, or issues, arising between the parties.

The principal sudder ameen too has recorded no reason for making the amlah as well as maliks responsible, the legal liability or

otherwise of the former being clearly a material issue for adjudication.

Reversing the decision of the principal sudder ameen, I remand the suit to him for re-trial, and the customary order will issue for refunding the institution fee.

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THE 10TH MARCH 1851.

No. 15 of 1850.

*Regular Appeal from a decision of Moulvee Neamut Allee Khan  
Buhadoor, first Principal Sudder Ameen, dated 4th July 1850.*

Khy Alec Singh and seven others, (Appellants,) Defendants,

*versus*

Musst. Beebee Eradut and Musst. Beebee Azmut, (Plaintiffs,) Respondents.

THIS action was brought by the plaintiffs to recover Company's rupees 2114, 14 annas, 11 pie, 16 krants, principal and interest of collections in the 4 annas share of mouza Chuk Bherkun, *alias* Sahee Khan Nowabadah, pergunnah Surresa, from 1241 to 1251 F. S., alleged to have been appropriated by the defendants.

The plaintiffs in this case are 4 anna sharers, and the defendants 6 anna sharers in the above mouza, and the suit dismissed by the principal sudder ameen on the 18th December 1845, having before been appealed was remanded for re-trial by the order of the 23rd May 1848, of the late additional judge, who considered the investigation in the lower court insufficient and incomplete. In answer to the plaintiff's claim of their (defendants') having appropriated the collections, the latter pleaded in defence that they held the property in thika farm by virtue of two pottahs granted by the Mussts. (plaintiffs) to the single defendant, Khyalee Singh, and it was to the necessity of more particular enquiry than had been instituted in the court of first instance in regard to the validity or otherwise of these alleged leases; that the order of the additional judge for remand and re-trial especially adverted.

The particulars of the suit and the judgment recorded by the appellate court will be found at page 114 of the Zillah Decisions for May 1848.

The fresh decision of the principal sudder ameen now appealed against, was a decree in favor of the plaintiffs. He found that when the property was under settlement, the defendants petitioned, praying that as they held the 4 annas share in thika farm from the plaintiffs, the settlement might be made with them, and the plaintiffs having also petitioned, denying the lease the defendants' prayer on their failure to produce the lease was rejected on the 26th May 1840 by the proceeding of the 30th, of which month

settlement was concluded with the plaintiffs on proof of their being in possession. The principal sudder ameen also observed that neither the first nor second pottah was attested by the cazee's seal, nor are they registered, neither does it appear that Nutteh Khan, who signed the leases for the Mussts., had any written authority from them to do so, nor through whom the defendants paid the peshgee to the plaintiffs who are purdah nusheens; that the evidence of the witness Alleemoollah (cited by the defendants) before the deputy collector and the testimony he (the witness,) gave in the principal sudder ameen's court, was contradictory, inasmuch as before the former authority he admitted, but before the latter he denied the lease to Khyalee Singh. The principal sudder ameen likewise remarked that the plaintiffs having objected to the first pottah, the circumstance of the second being unattested by the cazee's seal or registered, and there being no power of attorney from the Mussts. is certainly suspicious.

The putwaree and gomashita and shareholders of the other 6 annas attested the dhudha jummaundee filed by the plaintiffs, two witnesses having deposed to the fact of Khyalee Singh having collected the rents in the 4 annas share, three other persons having also testified that after the suit had been filed, a compromise between the parties regarding the appropriated collections was on the tapis. The principal sudder ameen also added his opinion in regard to three copies of papers filed by the defendants; that as the pottahs themselves had not been proved nothing else could be of any use.

The main grounds of appeal are that one shareholder could not possibly make over his share to another to collect the rents without some written authority, and that notwithstanding that in 1247 and 1248 F. S., the mouza was under attachment, and the rents collected by Government, the plaintiffs have sued them (appellants) for those years; that their (appellants') pottah has been proved by witnesses in the court of first instance, and that it is clear from the additional judge's decision that no one witness deposed being present when they (appellants) agreed to collect the rents, and that the pottah, which one of the sharers had, could not, owing to some dispute, be immediately produced. They further plead that Alleemoollah who has since denied, and Pursmun Doss putwaree, on whose papers the plaintiff's claim is based, both deposed before the settlement authorities to the effect of the property having been farmed to them (appellants). In regard too to two out of three copies of papers pronounced by the principal sudder ameen not to the purpose: one a moonsiff's fysaleh, and the other an answer in another suit, if the plaintiffs did not admit them, they would assuredly, as they know of them, have rebutted them. The principal sudder ameen does not state by what Regulation then existing pottahs unattested by the cazee and unregistered were to be deemed invalid. Nutteh Khan was the husband of Beebee Azmut,

and by him many pottahs and other deeds have been executed on behalf of the Mussts., and it was he who signed for them in the bill of sale of the 6 annas share, and the jummiabundee papers filed by the plaintiffs have been fabricated.

### JUDGMENT.

The plea advanced by the appellants as defendants in the court of first instance in regard to their being lessees, having been fully and conclusively disproved by the fresh enquiry made by the principal sudder ameen, their defence falls to the ground, and as the plaintiff's suit has been established, and nothing brought forward in appeal sufficient to impugn the correctness of the principal sudder ameen's decision, I uphold the same, and dismiss the appeal, with costs.

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THE 14TH MARCH 1851.

No. 21 of 1850.

*Regular Appeal from a decision of Ephraim DaCosta, Esquire, first Principal Sudder Ameen, dated 27th September 1850.*

Deepchund Sahoo, (Plaintiff,) Appellant,

*versus*

Baboo Goordyal Singh and four others, (Defendants,) Respondents.

SUIT to recover Company's rupees 3096, principal and interest of peshgee as per thika pottah, dated the 2nd Bhadoon 1245 F. S., on lease of mouza Bazectpore Himmut and Bazeetpore Khas, pergunnah Balagutch.

This and the three cases which follow, Nos. 22, 23 and 24 of 1850, being appeals from decisions regarding the same cause of action and between the same parties are brought on for hearing together, one judgment governing all.

The plaintiff in this case, a mahajun, sued the defendants as maliks of the above mouza to recover arrears of advance on a farming lease, the defendants pleading that not only had the peshgee been paid, but that there was a surplus due to them for rent after crediting the peshgee, to recover which four of the respondents sued the plaintiff in the other three cases.

The late first principal sudder ameen decreed the suit brought by the appellant as plaintiff, dismissing those preferred by his opponents, and on appeal preferred by the latter the cases were remanded as insufficiently investigated by this court's order of the 27th June 1849. The particulars of the suits and first judgment of this court will accordingly be found in full at pages 175, 176, 177, 178 and 179, of the Zillah Decisions for that month and year.

The present first principal sudder ameen, after preparing what purports to be a jumma-wasil-bakee, showing a balance due to the maliks (defendants) by the appellant as plaintiff of rupees 793-15-14-3, dismissed the suit of the latter, decreeing those instituted by the former to the extent of their claim being proved. The maliks not having appealed from that judgment, all the present appeals are preferred by the lessee, Deepchand Sahoo.

The chief grounds of appeal are that the maliks having deputed a sezawul to collect the rents, he (the lessee) was dispossessed, and that the order of the foudary court in the Act IV. case, which gave him possession was upset by the sessions court, under which circumstances the principal sudder ameen conjecturally deciding that he (appellant) was in possession up to the end of 1252 F. S., was not just, and regard is only had to the conditions of a lease when the maliks or lessors have not ousted the lessees; that he (appellant) had stated, in his plaint, that he was dispossessed from Bysakh 1250 F. S., and accordingly payments of rent before that time cannot prove his having been in possession subsequently; that the sezawul and his mohurir were the malik's servants, and if they did insert the words "during the thika lease" in the receipts, it ought not to be regarded; and that the handwriting of the signature on the two receipts, disallowed by the principal sudder ameen, corresponds with that on those admitted by the defendants (respondents.) He further contends that owing to the defendants' kubooleut being on stamp paper of insufficient value, the summary suit was dismissed, and that the decision of their cases which were based on that document without regard to that circumstance was unjust. He also urges that though the principal sudder ameen did exclude from his calculation the rent of 1246 F. S., because the summary suit instituted for its recovery was on account of the kubooleut being irregular, reversed by a civil suit, still he (appellant) is entitled to credit for whatever money he actually paid for that year; but which has not been allowed him, and it might at least have been credited for another year.

#### JUDGMENT.

Agreeing in opinion with the principal sudder ameen that with reference to the conditions of the lease, the facts of the case, and the precedent cited by him in support of his judgment, the malik's deputation of a sezawul was no dispossession of the farmer, I yet find so much that seems incorrect and incomplete in his investigation of these suits as constrains me to send them back for the second time.

Supposing the suit of neither party to be barred being heard by any legal obstacle, the point to be settled between the parties is nothing more than this, viz., how much the parties are proved to

the satisfaction of the court by documentary evidence, or the admission of both; but not the unsupported assertion of either to have paid each other, and by which of them a balance, if any, remains due, and if so, how much?

In his proceeding in this suit under Section 10, Regulation XXVI. of 1814, of the 25th September 1850, the principal sudder ameen has thus laid down one of the material issues of fact.

“How much has been received by the defendants from the plaintiff, and by the deputation of a sezawul?”

*First*, as regards the former, *i. e.*, payments to be credited irrespectively of and before the sezawul's collections. It appears that of fifteen receipts filed by the appellant twelve were allowed as genuine by his opponents, and one more, or altogether thirteen admitted by the principal sudder ameen. These thirteen receipts cover the sum of rupees 4731-10-2, as shown by the principal sudder ameen's decision up to Chyte 1250, or before the deputation of the sezawul. The plaintiff is, therefore, clearly entitled to credit for the whole of that sum without any reference to what the sezawul may have collected.

Regarding, secondly, the amount collected by the sezawul, I find it to have been pleaded by the appellant as defendant in his rejoinder in the case No. 22, in which Bhubootee Singh and Nuwaub Singh were plaintiffs, that the latter had understated the amount of the sezawul's collections. On this point then the admission of the plaintiffs, whose interest it was to understate the sum so collected, having been objected to by the defendant (appellant), can be considered no more than an *ex parte* statement, and therefore not sufficient. To that part of his issue regarding the sezawul's collections the principal sudder ameen should have added “whether the amount stated by the plaintiffs, or as alleged by the defendants more than that amount, and if so, how much?” and upon that issue he should have required good proof of the amount *bonâ fide* collected by the sezawul whose papers (which the plaintiffs, in their plaint, stated to be forthcoming,) should have been filed and verified. In the particular precedent quoted by the principal sudder ameen, the Sudder Court rejected the application preferred for the deputation of an ameen, to ascertain the exact amount of collections made by the sezawul, because “the evidence in proof of the sezawul's accounts and the amount collected by him is clear.” Such, however, is not the case in this suit, because neither have the sezawul's accounts been given in and attested, nor has proof been required in the lower court on that point, the admission of the party interested in understating the amount so collected being taken for granted, although objected to by their adversary. Indeed, the result, of the only enquiry into the sezawul's collections, though made by an ameen on the application of the maliks only, and though insufficient and unsatisfactory in itself, because the ameen himself reports that the

maliks did not furnish him with the necessary jummaabundee and jumma-khurch papers, is nevertheless in favor of the plaintiff, because it shews a total of rupees 3472 or rupees 1067, and something more than the sum credited to the plaintiff, for sezawul's collections in the account made by the principal sudder ameen.

This latter account too, the necessity of which was the main cause of these suits being remanded, and on which the principal sudder ameen's decision has been based, must be considered as otherwise incorrect, because in addition to its having been prepared without previous sufficient enquiry into the sezawul's collections, the principal sudder ameen, instead of crediting the plaintiff with the sum total of the thirteen receipts admitted or proved, and adding to it the total of the sezawul's collections and without referring to the periods, to which each relates being different, has altogether excluded the receipts and the amount they cover from his calculation, and has only given the plaintiff credit for the sum which the defendants admit having received, or something more than half the sum total of the receipts, added to what they also choose to say the sezawul collected, the principal sudder ameen's reason for so doing being that the aggregate on those two accounts exceeds the total covered by the receipts. Now the principal sudder ameen's decision shows that the receipts extend only to Chyte 1250 F. S., and the sezawul made no collections before the last four months of that year and during the years 1251 and 1252 F. S., the plaintiff is, therefore, clearly entitled to whatever may turn out on full enquiry to have been actually collected by the sezawul, over and above the amount covered by the receipts. A fresh account is, accordingly, indispensibly necessary.

It is another ground of appeal that in the suits of the respondents (maliks) for rent, and which the principal sudder ameen has decreed in their favor the kubooleut, which is their ground of action has never been filed, and though the appellant, as defendant, does not appear to have taken exception to that circumstance, or pleaded that it was written on stamp paper of insufficient value in the court of first instance, which seeing he held a decree of court rejecting it on the latter ground is unaccountable, it yet appears that the principal sudder ameen had before him (for he has referred to it in his account) the sudder ameen's decision of the 15th July 1840 (the date of the 18th September 1839 mentioned in the account being that of the summary decision,) which reversed the summary award of the revenue authorities by reason of the kubooleut being inadmissible as written on a stamp of inadequate value, which decision not having been appealed or reversed, has become final. Moreover, allusion to the kubooleut being on paper of insufficient value, and to its having before been subject of investigation in a civil suit is found both in the plaint in No. 22 and in the answer of the defendants (the maliks) in this suit. It ought, there-



fore, to have been an issue raised in bar of the hearing of the suits whether with reference to a former suit or former decree regarding the same matter the suits for rent now under appeal were admissible or not? As the case now stands the judgment of the principal sudder ameen giving the malik's decrees for rent on one and the same kubooleut, is a virtual reversal of a final decision to a contrary effect passed by a competent tribunal not before the principal sudder ameen in appeal, and an apparent infringement of Section 16, Regulation III. of 1793.

Reversing, therefore, his order in each of them, I remand all these four cases to the principal sudder ameen to be re-tried with advertence to the observations I have above recorded, and the usual order will issue for refunding the institution fee.

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THE 14TH MARCH 1851.

No. 22 of 1850.

*Regular Appeal from a decision of Ephraim DaCosta, Esq., first Principal Sudder Ameen, dated 27th September 1850.*

Deepchund Sahoo, (Defendant,) Appellant,

*versus*

Bhuboottee Singh and another, (Plaintiffs,) Respondents.

SUIT to recover Company's rupees 1397-2-3, and something more, principal and interest, on account of surplus rent of land of two shares of mouza Bazeetpore Himmud and Bazeetpore Khas, pergunnah Balagutch, from 1246 to 1252 F. S.

JUDGMENT.

For the reasons recorded in the preceding case, the decision which equally applies to this, the order of the lower court is reversed and the suit remanded for re-trial with the issue of the usual order for refunding the institution fee.

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THE 14TH MARCH 1851.

No. 23 of 1850.

*Regular Appeal from a decision of Ephraim DaCosta, Esq., first Principal Sudder Ameen, dated 27th September 1850.*

Deepchund Sahoo, (Defendant,) Appellant,

*versus*

Baboo Ramtuhul Singh, (Plaintiff,) Respondent.

SUIT to recover Company's rupees 771-11, principal and interest, on account of surplus rent of land of one share of mouza Bazeetpore Himmud and Bazeetpore Khas, pergunnah Balagutch, from 1246 to 1252 F. S.

## JUDGMENT.

For the reasons recorded in the case No. 22, the decision in which equally applies to this, the order of the lower court is reversed, and the suit remanded for re-trial, with the issue of the usual order for refunding the institution fee.

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THE 14TH MARCH 1851.

No. 24 of 1850.

*Regular Appeal from a decision of Ephraim DaCosta, Esq., first Principal Sudder Ameen, dated 27th September 1850.*

Deepchund Sahoo, (Defendant,) Appellant,

*versus*

Ram Bhurrosa Singh, (Plaintiff,) Respondent.

SUIT to recover Company's rupees 757-1-9, principal and interest, of rent of land of one share of mouza Bazeetpore Himmut and Bazeetpore Khas, pergunnah Balagutch, from 1246 to 1252 F. S.

## JUDGMENT.

For the reasons recorded in the case No. 22, the decision in which equally applies to this, the order of the lower court is reversed, and the suit remanded for re-trial, with the issue of the usual order for refunding the institution fee.

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THE 24TH MARCH 1851.

No. 26 of 1850.

*Regular Appeal from a decision of Moulvee Itrut Hossein, Sudder Ameen of Mozufferpore, dated 17th of July 1850.*

Juggoo Chobey and six others, (Defendants,) Appellants,

*versus*

Nursingnarain and thirty-seven others, (Plaintiffs,) Respondents.

SUIT to obtain possession and to be recorded in the collector's books as proprietors of one half of mouza Beryah, pergunnah Bissareh, a lately settled estate by reversal of the order of the revenue commissioner, dated 20th November 1846. Action being laid at Company's rupees 320-13, or three times the sudder jumma, and to recover Company's rupees 198-15-9, on account of mesne profits from 1254 to the 12 annas kist of 1255 F. S., or total Company's rupees 519-12-9.

The plaintiffs allege that the whole of mouza Beryah principal with Paharpore and 20 beegahs of land, called Buscrowah dependencies, their (plaintiffs') hereditary property, paid yearly revenue to Government of 61 rupees up to 1189 F. S. In 1190

F. S., Abkur Allee Khan Amil, having got a "razeenamah" from their (plaintiffs') ancestors gave the whole mouza in Serslukun to Bhairoo Dutt Chobey, the ancestor of the defendants; but the Shershikundar, by mutual agreement between them (plaintiffs) and himself to make an equal division, took for himself mouza Paharpore and the land of Buscrowah, causing malikanah land to be separately measured for them, (plaintiffs,) to whom he also gave a mokurree pottah of the remaining share, or the whole of mouza Beryah, on a yearly jumma of rupees 30-7-3, dated the 5th of Zilhijjah 25th Julooos, or 1191 F. S., to their (plaintiffs') ancestors, and they have accordingly all along been in possession. In 1244 F. S., the mouza in question was resumed by Government under Regulations II. of 1819 and III. of 1828, and the defendants representing that they were in possession, petitioned that a settlement might be made with them. They (plaintiffs) objected, and eventually the settlement officer on the 30th May 1839, settled the property jointly with both parties in equal shares, which was confirmed by the superintendent of khas mehals on the 31st January 1840; but ultimately agreeably to a letter from the revenue commissioner the settlement was ordered to be made separately, and they (plaintiffs) accordingly got a separate pottah for their malikanah khodkasht land. The papers, however, having been submitted to the revenue commissioner for his confirmation, that authority reversed the settlement made with the plaintiffs, and, in his letter of the 20th November 1846, ordered that a settlement of the whole 16 annas should be made with the lakhirajdars, they (plaintiffs) being referred to a regular suit, which order was upheld, on appeal, to the Sudder Board.

The defendants answer that reckoning from the dates of the orders of the commissioner, Sudder Board and collector, the plaintiffs are beyond the legal time, and they plead that their ancestors never gave the plaintiffs' ancestors one span of ground mokurree, and that the latter have, just as the other cultivators, been all along paying rent to their (defendants') ancestors. By what Regulation too or precedent do the plaintiffs seek to reverse the order of the revenue commissioner?

The sudder ameen, leaving the amount of mesne profits to be determined in execution, decreed in favor of the plaintiffs. He considered the proprietary right of the plaintiffs as maliks and mokurrureedars of the property under litigation to be fully established by the pottah, dated the 5th of Zilhijjah 25th Julooos, or 1191 F. S., given by the ancestors of the defendants to Bhairoo Dutt Chobey, the plaintiffs' ancestor, and the settlement proceeding of the 23rd June 1841, and that, notwithstanding there being maliks and mokurrureedars entitled to have settlement made with them, a settlement should have been made with the defendants as lakhirajdars,

was altogether inadmissible. The proceeding too of the khas mehal defendant of the 21st January 1842, affords unquestionable proof of the right of the plaintiffs to have the settlement made with them.

The grounds of appeal are that had the alleged mokurruree pottah been really executed, the original would have been authenticated by being filed in court, and that by Constructions No. 1371 the civil courts have no power to reverse settlements.

#### JUDGMENT.

In this case five of the plaintiffs having died after the institution of the suit, heirship of all five was proved in the lower court, the heir of one being another of the plaintiffs, and of the four others different parties not before suing or sued. The appellants, nevertheless, in their petition of appeal, named three out of the five dead persons as among their respondents, and though they presented a petition, praying for time to amend their appeal, not only was that petition incorrect, inasmuch as it only sought to cure the defect in regard to three instead of five respondents, but being beyond the prescribed period of appeal, could not any how be admitted.

Conformably, therefore, to para. 2 of the Circular Order of the 1st July 1842, and that of the 13th April 1847, this appeal must be, and is hereby, rejected, with costs.

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THE 31ST MARCH 1851.

No. 32 of 1850.

*Regular Appeal from a decision of Moulvee Itrut Hossein, Sudder Ameen of Mozufferpore, dated 16th of August 1850.*

Musst. Deo Koonwur, (Defendant,) Appellant,

*versus*

Boonyad Singh and another, (Plaintiffs,) Respondents.

THIS was a suit, which the plaintiffs instituted to recover from their opponents the sum of Company's rupees 450-2-1, principal and interest of a loan, alleged to have been made by an ancestor of the plaintiffs, and the latter to the defendant and Musst. Bechun Koonwur, on the 7th of Bhadoon 1246 F. S., (as per supplementary plaint,) on which date the two Mussts. executed the bond, which is the cause of action, promising repayment of the sum lent in the month of Maugh 1247 F. S., which promise, however, notwithstanding repeated importunities, they have failed to fulfil.

The defendant, in answer, denied her receipt of the money or her execution of the bond, and pleaded that the plaintiffs had not stated, in their plaint, the date of the bond, from which it appeared probable that the latter was not yet ready, and the plaintiffs having pleaded, in reply, that Musst. Anar Koonwur had signed the bond for the

defendant, the latter rejoined that as she was at enmity with Musst. Anar Koonwur, as could be proved by proceedings of the foudjarry court, her (Musst. Anar Koonwur's) signing her name for her, could not be sufficient or available, and that as Musst. Bechun Koonwur knew how to write Hindee, if the transaction was a *bond fide* one, the latter would doubtless have signed with her own hand, and that her (the defendant's) signature is always written for her by one Hunooman Suhye, which is not the case in this bond.

The decision of the sudder ameen was a decree in favor of the plaintiffs. He observed that though there did appear to be some dispute about property between the defendant and Musst. Anar Koonwur, yet that such disputes do occasionally exist and are afterwards settled, and that even people who can write do give others authority to sign for them, and that the evidence of the witnesses on the bond proves the loan to the defendant and Musst. Bechun Koonwur, (whose heir the defendant is,) and that Musst. Anar Koonwur did sign for them.

The grounds of appeal are that the bond having neither been registered nor attested by the cazee, what assurance had the plaintiffs in lending money, and that the evidence of the witnesses is contradictory, besides what has been pleaded regarding the alleged signing by Musst. Anar Koonwur.

#### JUDGMENT.

The sudder ameen's investigation of this case is insufficient and unsatisfactory, in addition to his proceeding under Section 10, Regulation XXVI. of 1814, not rightly determining the issues.

It is stated by one of the witnesses, named Lalljee Tewaree, that Musst. Anar Koonwur signed the bond for Musst. Bechun Koonwur, because the latter could not write, whereas, it appears from copy of a mooktearnamah filed by the appellant, and to which the said Lalljee Tewaree was himself a witness, that such mooktearnamah had been signed by Musst. Bechun Koonwur with her own hand.

It, moreover, appears from documentary proof given in by the appellant, that both before and subsequent to the alleged date of this transaction the appellant, Musst. Deo Koonwur and Musst. Anar Koonwur had been at enmity and on bad terms. To neither of the above circumstances does the sudder ameen appear to have given due weight and consideration.

Reversing, therefore, his decision, I remand the suit to the sudder ameen for re-trial, and with the issue of the customary order for refunding the institution fee.

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PRESENT: W. ST. QUINTIN, Esq., ADDITIONAL JUDGE.

THE 3RD MARCH 1851.

No. 51 of 1849.

*Appeal against a decree passed by Kaze Mahomed Allum, Moonsiff of Koylee, on 15th January 1849.*

Rampershaud Singh and Palwan Singh, brother and heir of Chey-kowree Singh, deceased, (Plaintiffs,) Appellants,

*versus*

Musst. Rajbunsee Koer, wife, and Ram Rutton Rai, son of Mahirbhan Rai, deceased, (Defendants,) Respondents.

THIS suit was instituted on the 24th July 1848, to recover the sum of 145 rupees, 8 annas, 9 pic, being the amount, principal and interest, of an advance on a pottah, dated in 1245 Fusly.

The plaint sets forth that Musst. Rajbunsee Koer (defendant,) during the minority of her son, Ram Rutton Rai (defendant,) leased and sub-leased in all 9 annas of mouza Syra to the plaintiffs, on a jumma of 165 rupees, receiving 75 rupees in advance; that the pottah was dated 7th Phalgun 1245 F. S., and provided that the lease should run from that year to 1250 Fusly, and in the event of the advance not having been realized up to the end of 1250, the lease was to continue, and if the plaintiffs should be ousted for the subfarm of 6 annas, they are to be indemnified from the estate; that accordingly the plaintiffs held possession of the farm up to Bysack 1248 F. S.; that they were then ousted from their farm lease, and sublease; that they forego their claim for damages, and sue only for the amount advanced by them. Ram Rutton Rai (defendant,) in reply, pleads that the plaintiffs were in possession of this farm up to 1248 Fusly, and collected all the rents without making the stipulated payment to the lessors; that the farmer was consequently resumed, and that a large balance is due to the defendant from the plaintiffs.

Musst. Rajbunsee Koer does not appear in the suit. The moonsiff dismisses the suit, as he considers it to be proved that the defendants have a claim against the plaintiff in excess of the amount now claimed by them.

In appeal, the plaintiffs urge that they make out their claim to a refund of the money advanced for this farm, more particularly as the farm was resumed, when a large amount of outstanding balances was due to them from the cultivators.

The point to be decided in appeal is whether, or no, the claim of the defendant for rents can be admitted or not, as an offset to the advance made by the plaintiffs.

## JUDGMENT.

The appellants fail to prove payment to the respondents of the stipulated rent during their occupancy of the farm, and their claim for a refund of the advance whilst there exists a balance against them is inadmissible. I therefore confirm this decree, and dismiss the appeal, without issuing notice on the respondent.

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THE 7TH MARCH 1851.

No. 451 of 1847.

*Appeal against a decree passed by Moulvee Neamat Alli Khan, late Principal Sudder Ameen, on 15th June 1847.*

Mussts. Maun Beebee, Nunnee Khanum, and after her Choonee Begum, Musst. Beebee Woozeerun and Sheikh Wazooddeen Hossein, father and guardian of Sheikh Nujjeemooddeen Hossein, (Defendants,) Appellants,

*versus,*

Musst. Nunnee, (Plaintiff,) Respondent.

THIS case is recorded at page 20 of Tirhoot Zillah Decisions for January 1850, and at page 361 of the Decisions of the Sudder Dewanny Adawlut for July 1850, when it was sent back for re-trial.

This suit was instituted, on the 10th February 1846, to decide a right and confirm possession, and for a mutation of registry as proprietor of 4 annas, 11 g. 1 c. 2 k. 1 d. 6 r. 4 p. in mouza Khuggoorah Boozroog Khoord *alias* Nowadah, and 4 annas, 2 pie, in mouza Khuggoorah *alias* Bussunt, and 3 annas 1 g. 1 c. 2 k. 1 d. 6 r. 4 p. in Surae Alifgunge, and 4 annas 4 g. 1 c. 1 k. 1 d. 10 r. in 2 beegahs of khiraj lands in Puttee Khadirahbad, and to recover the sum of 1250 rupees, 1 anna out of the sale proceeds of Rohillagunge, the estate of Meetoo Khan, a brother, deceased.

Suit valued at rupees 1900-7-6.

The plaint is that Meetoo Khan, own brother to the plaintiff, died without issue in 1238 Fusly, leaving as his heirs and co-inheriting equally his widow Maun Beebee, the defendant, and his three sisters, the plaintiff and Musst. Soopun and Ismut; that Soopun and Ismut have died without issue, and the plaintiff is their heir; that Maun Beebee has sold to the defendants severally the property above claimed as the whole of the property of her deceased husband, and thus disturbed the rightful possession of the plaintiff.

The defendant, Sheikh Wazooddeen Hossein, objects that the suit is not cognizable, as it is instituted sixteen years subsequent to the death of Meetoo Khan; that Meetoo Khan, before his demise, transferred this property under a deed of bye-mokassa, dated 30th Rubbee Oos Sanee 1236 F. S., to his wife Maun Beebee; that this

deed was legalized in the suit of Bidyanath Doss (plaintiff) *versus* Maun Beebee and others, by a decree of the additional judge on 10th February 1842. The special appeal against which was rejected that Maun Beebee has sold to him a 1 anna share in each of the villages of Khuggoorah, that a decree for possession in this 1 anna has been obtained from the sudder ameen on 23rd December 1845.

Musst. Maun Beebee, in reply, pleads the right to dispose of this property under the deed of bye-mokassa by which it was transferred to her by her deceased husband, Meetoo Khan, in his lifetime; that as Meetoo Khan, at his death, left no property, the suit of the plaintiff as his heir is not tenable.

Musst. Woozeerun, defendant, in her reply, pleads, that she purchased with the estate of Hisghar Alli Khan from Maun Beebee.

Musst. Nunnee Khanum, defendant, does not defend the suit.

Musst. Beebee Aleemah is a claimant by right of purchase from Musst. Nunnee Khanum who had purchased from Maun Beebee.

Furzund Alli Khan is a claimant as holding a farming lease from Meetoo Khan.

Maharajah Roodah Singh Bahadoor is a claimant as the purchaser of the right and interest of the four heirs of Meetoo Khan in Rohillahgunge, sold in satisfaction of a decree of court.

The principal sudder ameen passed a decree in favor of the plaintiff, being of opinion that the deed of bye-mokassa is not valid, and that Maun Beebee has never had possession in the whole estate of Meetoo Khan; that a copy of a petition filed before the collector by Meetoo Khan before his death and subsequent to the date of this deed, shows that he himself was in possession subsequent to the alleged bye-mokassa; that the occupancy of the plaintiff as the heir of Meetoo Khan, subsequent to his demise, is proved by the *fysallah* of the 10th May 1834, in the case of Bustee Lall, plaintiff, *versus* the present plaintiff and others, and by the decree of court, dated 30th November 1842, in the appeal case of Soonful Sahoo *versus* Naun Beebee and others; that the decree of the additional judge, dated 10th February 1842, in the suit of Bidyanath Doss *versus* Maun Beebee and others, and the order of the Sudder rejecting a special appeal in that case filed by the defendant to prove the validity of this deed of bye-mokassa, is not evidence as it was subsequently filed by Maun Beebee in her special appeal in her suit with Soonful Sahoo, and was rejected by the Sudder; that as the deed of bye-mokassa is dated more than 12 years ago, it cannot be promulgated, and the court has no authority to nullify the decisions filed by the plaintiffs.

In appeal, the defendants urge that the lower court has no authority to decree the validity, or otherwise of the deed of bye-mokassa, as the plaintiff does not sue to try issue on that point;



that the shares of the plaintiff's sisters ought to have been included in the suit that Meetoo Khan died in the year 1238, and the suit is therefore barred by the statute of limitation; that, if the court had any doubt as to the occupation of Maun Beebee, the appointment of an ameen to make a local enquiry on the point was the course to have been pursued; that as the lower court has recognized the purchase of Nujjeemooddeen Hossein, he ought to have been exempted from the costs of the suit.

The respondents, in reply, again urge that the deed of bye-mokassa has been declared invalid on several occasions, and has been subsequently rejected in the special appeal case.

The Sudder Court has determined the points to be decided in appeal by returning this case for a fresh decision on the merits of the claims generally.

### JUDGMENT.

The wording of the plaint in this case is obscure and indefinite; it begins by asking for an investigation as to title, and for the confirmation of possession and mutation of registry as proprietors of certain estates inherited from Meetoo Khan, the deceased brother of the respondent, and it ends by the respondent asking to be placed in her former position by declaring a deed of bye-mokassa invalid, in virtue of which Maun Beebee, the widow of Meetoo Khan, has alienated the estates in question. Thus the respondent declares to be in possession and out of possession of the identical estates. I conclude that the respondent intends to sue to be recorded as proprietor of these estates by right of inheritance from Meetoo Khan, who died as far back as 1238 Fusly. The first point, therefore, to be established, is her actual existent possession to the extent alleged, failing in this she loses her ground of action. Now to prove this all-important point the respondent has the evidence of eight witnesses, which is not of much avail, seeing that feuds have existed between these litigants for years, and a *fysallah* dated 10th May 1834, in the case of Bustee Lall *versus* the respondent and others, which only recognises the possession of the respondents in a share of the *zerat* lands of the two villages of Khuggoorah, and a decree, dated the 5th February 1841, in the case of Soonful Sahoo *versus* Maun Beebee and others, which only proves that the respondent succeeded to the effects of her brother Meetoo Khan; but does not in any way show that she inherited the shares she now claims to be recorded the proprietor of, and declares to be in possession of. As I consider that the respondent fails to prove her ground of action, the genuineness of the deed of bye-mokassa cannot be considered, and I am further of opinion, that the lower court has adjudicated on the genuineness of the bye-mokassa decided a right of inheritance, and nullified several deeds

of sale on a suit for dakhil-kharij, and gone altogether beyond the record, in doing so. I therefore decree this appeal, and dismiss the suit, with all costs.

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THE 7TH MARCH 1851.

No. 649 of 1848.

*Appeal against a decree passed by Moulvee Mahomed Mohamid, late second Principal Sudder Ameen of Tirhoot, on 20th September 1848.*

Joomuck Kharruck and others, (Defendants,) Appellants,

*versus*

Maharaj Coomar and Baboo Ramahput Singh, (Plaintiffs,) Respondents.

THIS suit was instituted, on the 15th June 1848, to recover the sum of rupees 1974, 4 annas, 6 pie, being the amount, principal and interest, of rent balances for a farm of mouza Arrareah Singram, accruing from 1254 F. S. up to the kist of Jyte 1255 Fusly.

The plaint is that the defendants held this farm from the plaintiffs, and are entitled to rents to the amount now claimed.

The defendants, in reply, admit their lease-holding, and plead that in 1254 they were dispossessed of 251 beegahs, 7 biswas of land on the farm in a boundary dispute; that the plaintiffs have a suit now pending for the crops and for possession in the lands, and that consequently they are entitled to a deduction of rent for the lands in question, and also for the sum of 125 rupees as zurpeshgee; that the actual balance due is rupees 70, 12 annas, 1 pie, 12 krants, which they are prepared to make good.

The second principal sudder ameen passed a decree in favor of the plaintiffs, observing that the defendants are bound, by their farming agreement, to pay the full amount of rent agreed for, that if the defendants have been ousted from any of the lands on the farm they have their remedy against the party who has injured them, and that the advance must be settled for at the expiry of the lease.

In appeal, the defendants urge that they are entitled to a remission of rents, and that the second principal sudder ameen would not allow them to file proofs in support of their pleas.

Notices were issued on the respondents on the 27th January 1851, and the appellants were called upon to file proof that the respondent had sued for mesne profits on the lands for which his farmer had been ousted.

The respondent, in reply, observes that the defendants are bound, by their agreement, which contains no provision for any remission of rent in the event of the farmer being dispossessed of any of the lands of the farm.

The appellants file copy of the plaint of the respondents in his suit for possession of these lands. The point to be decided in appeal is whether or no the appellants are entitled to a deduction of rents.

### JUDGMENT.

The respondent has not sued to recover mesne profits for himself in the action for the lands now in dispute, and he has therefore a clear right to keep the appellants to the terms of their lease bond.

The appellants must look for satisfaction from the party by whom they may have been injured. I therefore see no reason to disturb this decree, which is confirmed, with costs on the appellants.

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THE 7TH MARCH 1851.

No. 510 of 1848.

*Appeal against a decree passed by Syud Mahomed Mohamid, late second Principal Sudder Ameen of Tirhoot, on 20th July 1848.*

Konyah Lall, (Plaintiff,) Appellant,

*versus*

Purmashree Dutt Misser, son of Sham Lall Misser, 1st party,  
Lala Munhurun Lall, 2nd party, and Jankee Ram Sahoo, heir  
of Ramdyal Shah, 3rd party, (Defendants,) Respondents.

THIS suit was instituted on 27th September 1847, for possession, mutation of names as proprietors, and mesne profits for a 4 anna out of a 5 anna share in mouza Kantee, by setting aside a conditional sale under a deed, dated 24th Aughun 1242 F. S., and paying up 640 rupees as the amount advanced. Suit valued at rupees 1107-7-3.

The plaint is that Sham Lall Misser, the proprietor of 5 annas in Kantee, made a conditional sale of 4 annas to the defendants, Lala Munhurun Lall and Ramdyal Shah, under the deed stated above, that it was agreed that possession should be restored to the seller Sham Lall, if at the end of any year he made good the money advanced, as well as any outstanding balances; that the purchasers held possession in this way, and their names were recorded in the settlement proceedings; that on the 16th May 1842, the rights and interests of Sham Lall in Kantee were sold at auction in satisfaction of the decree of Chadee Lall, and were purchased by the plaintiff; that the plaintiff sued for possession, and obtained a decree for 1 anna share, and was referred to the present action to obtain possession in the remaining 4 annas.

The defendant, Jankee Ram, admits the conditional sale of 4 annas to his father and Munhurun Lall, and pleads that prior to the settlement the deed of agreement was returned; that the

4 annas was settled for with him and Munhurun Lall; that only 1 anna was the property of Sham Lall at the time of sale; that the plaintiff and Munhurun Lall are uncle and nephew, and this is a collusive suit to obtain possession of the whole of the 5 annas.

The other defendant does not defend the suit.

The second principal sudder ameen dismisses the claim as he considers it to be proved that Sham Lall had only a 1 anna share in this estate at the time his rights and interests were sold in mouza Kantee.

In appeal, the plaintiff urges that the sale of 4 annas by Sham Lall was only a conditional one, and therefore his right and interest was not extinct at the time he was sold up. Notice was served on the respondents on 31st December 1850.

Jankee Ram, in his reply, supports the reasons given by the lower court for dismissing the suit. Purmashree Dutt Misser, the son and heir of Sham Lall, now comes forward and files the deed of agreement, which Jankee Ram alleges was returned to him, and now claims this 4 anna share.

The point to be decided in appeal is, whether or no the rights and interests of Sham Lall in this 4 anna share was extinct at the time he was sued up in mouza Kantee.

#### JUDGMENT.

The respondent, Jankee Ram, produces no proof to show that the conditional sale made by Sham Lall to his father, Ramdyal, ever became absolute: the settlement proceedings only prove who was in actual possession of this 4 annas of Kantee at the time the village was settled for. I therefore reverse this decree, and decree the appeal, with costs.

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THE 7TH MARCH 1851.

No. 509 of 1848.

*Appeal against a decree passed by the late 2nd Principal Sudder Ameen, Syud Mahomed Mohamid, on 19th July 1848.*

Sheikh Khyrat Alli, (Defendant,) Appellant, in the suit of Mr. James Wilson, (Plaintiff,) Respondent,

*versus*

Sheikh Khyrat Alli and Sheikh Wazooddeen Hossein, Defendants.

THIS suit was instituted, on the 4th September 1847, to recover the sum of 1150 rupees, being the amount, principal and interest, advanced for a farm under a deed dated 24th May 1846.

The plaint is that the defendant, Sheikh Wazooddeen Hossein, having made a furzee purchase in the name of Khyrat Alli of certain shares in several villages from Musst. Oolfut, leased them to

the plaintiff in the name of Khyrat Alli, taking an advance of 1000 rupees; that as no possession in the farm has been rendered, this action is brought to recover the sum advanced with interest. Wazooddeen Hossein, defendant, in reply, pleads that he has no interest in this property, nor was he a party in leasing it to the plaintiff.

Sheikh Khyrat Alli, defendant, admits the lease, and pleads that possession was rendered accordingly.

Sutram Doss claims this property by right of purchase from Musst. Oolfut, and declares that he has leased it to Ubdooth Singh, who also petitions that the farm is in his occupation.

The additional principal sudder ameen passes a decree in favor of the plaintiff, holding Sheik Khyrat Alli alone responsible to make good the advance as the lease is granted in his name, and there is no proof that the plaintiff ever was in possession of the farm.

Sheikh Khyrat Alli, in appeal, urges that the occupation of the plaintiff in the farm is proved.

The point to be decided in appeal is the occupation or otherwise of the farmer Mr. J. Wilson.

#### JUDGMENT.

If the respondent *was* put in possession of this farm in virtue of this lease, with what object has he brought this action? this is not accounted for. There is no proof of his occupancy, and, on the contrary, there is the strongest presumptive evidence, especially from the petition of Sutram Doss, the third party in the suit, that no possession was or could have been rendered by the lessor to appellant. I therefore uphold this decree, and dismiss the appeal without issuing notice on the respondent.

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THE 7TH MARCH 1851.

No. 452 of 1847.

*Appeal against a decree passed by Moulvee Neamat Alli Khan, late first Principal Sudder Ameen of Tirhoot, on 15th June 1847.*

Musst. Nunnee Khanum, (Plaintiff,) Appellant,

*versus*

Musst. Maun Beebee and Sheikh Reazut Alli, (Defendants,) and  
Musst. Nunnee, third party, Respondent.

THIS suit is connected with the foregoing one, No. 451, and will be found detailed at page 24 of the Tirhoot Zillah Court Decisions for January 1850.

In this case Maun Beebee in virtue of the deed of bye mokassa, sells a portion of the estate, contained in that deed to her mother. Musst. Nunnee Khanum brings this action to legalize the purchase, and Maun Beebee confesses judgment, whilst Musst. Nunnee and

other parties are objectors in the suit, declaring that Maun Beebee has no power to alienate property to the extent she has. The second principal sudder ameen having declared the bye-mokassa invalid in the former suit, decrees to the plaintiff in this suit such portion of the estate, inherited direct from Meetoo Khan, which was in possession of the vendor Maun Beebee at the time of the sale.

The then additional judge, considering the bye-mokassa to be valid, amends the decree of the lower court and decrees the appeal.

This case is also returned by the Sudder to be decided on its merits.

#### JUDGMENT.

I have ruled in the former case that the genuineness of this deed of bye-mokassa could not be considered, and I am of the same opinion as regards this case ; before Maun Beebee can alienate property held by her in virtue of the deed of bye-mokassa, she must first establish the validity of that deed. This suit is evidently fictitious and brought to establish the genuineness of the deed, and is irregular and cannot be sustained. I therefore reverse the decree of the lower court in this case, and dismiss the suit, with costs.

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THE 7TH MARCH 1851.

No. 650 of 1848.

*Appeal against a decree passed by Moulvee Mahomed Mohamid, late second Principal Sudder Ameen of Tirhoot, on 15th September 1848.*

Gooroopershaud Mulitoo and others, (Defendants,) Appellants,

*versus*

Maharaj Coomar and Ruhmahpat Singh, (Plaintiffs,) Respondents.

THIS suit was instituted, on 28th September 1847, to recover the sum of rupees 1916-13, being the amount, principal and interest, of rent balances due for a farm of the village of Nonore, accruing in 1254 F. S.

This case is similar in all respects to the foregoing one No. 649.

#### JUDGMENT.

For the reasons stated in case, No. 649, just disposed off, I confirm this decree, and dismiss the appeal, with costs.

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THE 10TH MARCH 1851.

No. 59 of 1849.

*Appeal against a decree passed by Moulvee Mahomed Mohamid Khan, late second Principal Sudder Ameen, on 19th June 1849.*

Musst. Khudarun Chowdrine and two others, guardians of Ram Pershaud and Gobind Pershaud, minors, heirs of Munnoo Lall, the heir of Ram Jewun Lall, (Plaintiffs,) Appellants,

*versus*

Rye Nundkishore Singh, Musst. Chundhun Koer, his wife, and Bhyrow Dutt, Surbarakar, (Defendants,) Respondents.

THIS suit was instituted, on 3rd January 1848, to recover the sum of rupees 3974 annas 6 pie 6, being the amount, principal and interest, due for a ticca peshgee under a deed, dated 23rd Chyete 1242 F. S.

The plaint sets forth that the defendants, Rye Nundkishore and his wife, accepted on advance of rupees 3600 from the plaintiff, Ram Jewun Lall's ancestor, and leased to him for seven years their village of Mohecoodeenpore; that the lease provided that the plaintiffs should make good the Government revenue of rupces 104-4, and pay rupees 2 annually to the lessors, and that if at the expiry of the lease in 1248 Fusly the advance was not refunded, the lease should continue in force; that the plaintiff occupied the farm up to the end of 1254 Fusly, and were ousted in 1255 Fusly, without the defendants having first refunded the sum advanced to them.

The defendant Musst. Chundhun Koer, in reply, denies the validity of this deed, and pleads that her husband is deaf and dumb, and unable to manage his own affairs, and that during his lifetime she herself had no power to grant leases; that from 1242 Fusly her husband's estates have been legally put under charge of a surbarakar; that prior to his appointment the mother and guardian of her husband had leased this village Khoosk, or without advance to Munoo Lall, the father of the plaintiff, from 1241 up to 1247 Fusly. A supplemental petition is admitted stating that this ticca peshgee deed was executed through the agency of one Sungut Lall, and making Bhyrow Dutt, the surbarakar a defendant, his reply is similar to that of Musst. Chundhun Koer.

The second principal sudder ameen considers that as both sides admit that Rye Nundkishore is deaf and dumb, and his wife a purdah woman, and the plaintiff is not able to prove the authority of Sungut Lall to execute this deed on their behalf, the suit must be dismissed. In appeal, the plaintiffs urge that they were not able to produce the power of attorney to Sungut Lall, either in original or copy; but that the evidence of their witnesses is sufficient to prove validity of the deed in question.

Notices were served on the respondents by the judge on the 8th January 1850, their replies are in support of the decree passed in their favor.

The point to be decided in appeal is the validity or otherwise of this deed.

#### JUDGMENT.

The appellants are not only not able to produce the copy nor original of the power of attorney by which Sungut Lall executed this alleged deed on the part of Rye Nundkishore and his wife; but they do not attempt to prove that he was ever employed by these parties as their agent, nor do they support their case by proving that they paid in the Government revenue for this estate as stipulated for in this alleged agreement. It is on record that at the time that this alleged deed was executed, a surbarakar had been appointed to take charge of the estates of Rye Nundkishore.

For these reasons I uphold this decree, and, as I consider this appeal to be groundless and vexatious, I fine the appellant one hundred rupees.

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THE 10TH MARCH 1851.

Nos. 569 and 588 of 1848.

*Appeals against a decree passed by Moulvee Mahomed Mohumid Khan, late second Principal Sudder Ameen, on 16th August 1848.*

No. 569, Gopal Jha and fourteen others, second party,  
(Defendants,) Appellants,

No. 588, Musst. Khairoolnissa Begum and others, first party,  
(Defendants,) Appellants,

In the suit of Ahjeet Ojah and four others, (Plaintiffs),  
Respondents,

*versus*

The Appellant, Khajeh Golam Moheeddoodeen Khan, Defendant.

THIS action was brought, on the 1st September 1847, to decide a title and for possession and a mutation of registry for mouza Azcespore, a resumed and newly-settled estate, and to recover mesne profits, valued at rupees 1294 annas 14 pie 9. Suit valued at rupees 1576 annas 8 pie 9.

The plaintiff is that the defendant, Khajeh Golam Moheeddoodeen Khan, on his own behalf and as the agent of the defendants, Khairoolnissa, his mother, and Golam Moostafa Khan, his brother, and his two sisters, Musst. Beebee and Hosheah Begum, sold this estate for rupees 1000 to the plaintiffs; that the purchase money was paid and received, and a registered deed of sale, dated 12th March 1844 duly delivered; that the vendors, through their agent, presented a petition for dakhil-kharij, which was sent by the collector of Tirhoot to the collector of Patna, to be attested by the



vendors' person; that the vendors are the minhaeedhars of the village; that the second party of defendants who are the proprietors and whose malikanah rights have been recognized by the Sirkar, claimed a right of pre-emption; that the vendors colluded with these claimants and would not make their appearance at Patna; that consequently the plaintiffs were not able to procure a dakhil-kharij; that on the 11th March 1845 on the strength of this deed of sale to the plaintiff, the claim for pre-emption was dismissed; that by this dispute the plaintiffs are kept out of possession.

Of the first party of defendants, Khajeh Moheedooddeen does not defend the suit.

The mother, brother and two sisters plead that they were not parties to this sale, and that Moheedooddeen had no power to act for them; that the brother and sisters were minors at the time of this alleged sale; that they do not receive rents from the second party of defendant who occupy the whole estate.

The second party to the defence pleads that this village was formerly a rent-free holding, and was resumed, and the estate settled with the minhaeedars the first party of defendants; that the second party are the proprietors and receive only malikanah; that they pay the rent of their zerat cultivation to the first party; that their claim for pre-emption was dismissed in consequence of their not having been admitted to the settlement of the estate.

The second principal sudder ameen considers that in the suit for pre-emption the vendors acknowledged the validity of this sale; that although the witnesses to the power of attorney authorizing Moheedooddeen to transact this sale are not forthcoming, yet the evidence of the witnesses of the plaintiff and the mohurir of the kazee's office fully prove the validity of the mooktearnamah; that from the personal appearance of Golam Moostafa Khan, he is above 20 years of age and his sisters are admitted to be older than he is, therefore the objection as to their minority at the time the deed of sale was executed is not tenable, and that as the second party of defendants declared that they paid rents to the first party, which is denied by the first party, both parties are equally responsible for mesne profits. A decree is, therefore, passed in favor of the plaintiffs' claim.

The second party of defendants appeal on the plea that they ought not to be saddled with mesne profits as they are *quasi* cultivators in the estate, and that all they have done in the matter was to claim a right of pre-emption, and that it is proved on evidence that they paid rents to the first party.

The first party of defendants urge, in appeal, that they never admitted the validity of this sale in this suit for a right of pre-emption; that a supplemental petition, confessing judgment in that suit, was presented without their authority; that they protested

against it, and that no proper enquiry has been made in the lower court on the point.

Notices were served on the respondents on the 21st January 1851, and, in their reply, they plead that this deed has been acknowledged to be valid by first party of appellants, and that both parties of appellants are liable for mesne profits.

The points to be decided in appeal are the validity, or otherwise, of this deed of sale, and, if valid, how far both parties of appellants are liable for mesne profits.

#### JUDGMENT.

There is no sufficient proof that Balak Ram, attorney, had any power in the suit for pre-emption to admit the validity of this sale, nor is there sufficient proof in the present suit that Khajeh Moheed-ooddeen Khan had power to execute the sale on behalf of his mother, brother and sisters. The respondent, therefore, fails to prove the two most important points towards establishing the validity of this alleged deed of sale. I reverse this decree, and decree the appeal, with costs in both cases.

THE 11TH MARCH 1851.

No. 60 of 1849.

*Appeal against a decree passed by Moulvee Mahomed Mohamid Khan, late 2nd Principal Sudder Ameen, on 21st June 1849.*

Mohunt Ramdyal Gheer, (Plaintiff,) Appellant,

*versus*

Goshie Uchumbit Gheer and Toolsee Rai, (Defendants,) Respondents.

THIS suit was instituted on 14th February 1848, to recover possession by setting aside a deed of sale dated 5th Aghun 1255 Fusly, for 100 beegahs of minhaee sheeootur lands in mouza Keersee, and to recover mesne profits from the date of deed of sale up to Maugh 1255 Fusly. The whole suit valued at 1837 rupees, 8 annas.

The plaint is, that the plaintiff is the mohunt of mutt of Delawah-poor and of its dependencies, mutt Kursun and mutt Kalakhoor; that the defendant, Uchumbit Gheer, as resident mohunt in charge of mutt Kursun, sold these lands to the defendant Toolsee Rai, without authority, and after he had entered into a written agreement not to do so without the consent of the plaintiff, his religious superior.

The defendants, both seller and purchaser, in reply, plead that these lands are separate and distinct from the mutt, and were acquired by the ancestor of Uchumbit Gheer; that the plaintiff has no interest in the lands; that the deed of agreement is an invention; and that the lands in question have always been in the occupation of Uchumbit Gheer and his ancestor Adheer Gheer.

The second principal sudder ameen observes that although the deed of agreement is proved by the witnesses, yet it is interpolated that the undisturbed possession of Uchumbit and his ancestor is fully proved; that there appears no reason for this ikrarnamah; that the ikrarnamah is signed for Uchumbit Gheer, and yet his mark on the deed has the appearance of having been made by a person able to write, and the claim was therefore dismissed.

In appeal, the plaintiff urges that the validity of this deed of agreement is proved on evidence that the deed is not interpolated, and might have been tested by sending for the records of the register's office; that the evidence of his witness proves that the defendant Uchumbit Gheer is the dependent of the plaintiff.

Notices were served on the respondents by the judge on the 15th April 1850. Toolsee Rai, the purchaser, alone responds in support of the decree. The point to be decided in appeal is whether or no Uchumbit Gheer had the power of executing this deed of sale.

#### JUDGMENT.

I differ entirely with the lower court in the finding in this case, because the possession of Uchumbit Gheer and his ancestor is not denied, and the evidence to the validity of this deed of agreement by which Uchumbit Gheer covenants not to dispose of the property of the mutt is full and satisfactory. The deed in question has no appearance of interpolation, and as Uchumbit Gheer does not sign for himself in his vakulutnamah in this suit, it is quite clear that, if able to write, it is not his custom to sign for himself. The reason for this deed of agreement is apparent enough, as it was executed to bar proceeding which has now taken place; that of a dependent mohunt alienating the property of his religious superior. The evidence of the appellants' witnesses proves without a doubt, that Uchumbit Gheer was the curate of the appellant, and that these lands were an endowment to the mutt, facts which the witnesses of the respondents are not able to controvert. For these reasons I reverse this decree, and decree the appeal, with costs.

THE 13TH MARCH 1851.

No. 64 of 1849.

*Appeal against a decree passed by Moulvee Neamat Ally Khan, late Principal Sudder Ameen, on 28th June 1849.*

Mohun Loll, (Defendant,) Appellant, in the suit of  
Durbaree Lall Sahoo and three others, (Plaintiffs,) Respondents,

*versus*

The Appellant and Musst. Mukhun Koer, widow of Gunush Lall and guardian of the minor daughter of Imrit Lall, deceased, Defendants.

THIS suit was instituted on 20th January 1848, to set aside a deed of sale, dated 11th January 1843, and to reverse miscellaneous

orders passed in an execution of decree case, dated 16th February and 3d April 1847, and to sell at auction four puckah houses. Suit valued at rupees 4652.

The plaint is, that the plaintiff obtained a decree on the 12th August 1845, against the defendant, Musst. Mukhun Koer, and that these houses were sought to be sold in satisfaction, and were released for sale on the objection of the defendant Mohun Lall, who pleaded that they were his property in virtue of this deed of sale; that the sale is collusive to hinder execution of the decree of the plaintiff, and this action is preferred under Construction No. 1301. Mohun Lall alone defends the suit, and pleads that the sale to him on the part of this lady was *bond fide*, and the deed executed prior to the institution of the suit of the plaintiff; that the valuation of the suit is opposed to Construction No. 1301.

The principal sudder ameen considers that the sale was collusive, and entered into to defraud the plaintiff, because the value of the property in question is 10,000 rupees, and only 1000 rupees is the price paid under the deed of sale, and the occupation of the vendor subsequent to the date of the deed is established on evidence, a decree is, therefore, passed in favor of the plaintiffs; he is also of opinion that the suit has been rightly valued, as it is according to the valuation fixed on the property in a former enquiry on the point.

In appeal, the defendant urges his former pleas, and the respondent having been served out notice by the judge on the 8th January 1850, does the same; the point to be decided in appeal is whether or no this deed of sale was executed with the object of injuring the respondent in the execution of his decree had against Musst. Mukhun Koer.

#### JUDGMENT.

This deed of sale was legally executed, and registered prior to the institution of the suit of the respondents against Musst. Mukhun Koer.

The respondents have no ground for charging these defendants with a fraud to injure them in a claim, which had no legal existence at the time this sale was made. I therefore reverse this decree, and decree the appeal, with costs.

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THE 14TH MARCH 1851.

No. 4 of 1849.

*Appeal against a decree passed by Moulvee Neamut Ally Khan, late Principal Sudder Ameen, on 14th December 1848.*

Mr. R. Tayler, (Plaintiff,) Appellant,

*versus*

Beechook Jha, Boodhun Jha and Simboo Dutt Jha, (Defendants,) Respondents.

A PETITION presented to-day by Boodhun Jha, the son of Simboo Dutt Jha, deceased, praying that according to a summary decree of the Sudder, dated 24th March 1846, this appeal be dismissed.

JUDGMENT.

This suit is instituted against Simboo Dutt Jha who dies, and his son, the petitioner Boodhun Jha, has been admitted, and recognized as his heir before the decree was passed.

In appeal, the appellants have omitted the name of Boodhun Jha as co-respondent, and they have not cured this defect within the period of appeal. I therefore dismiss this appeal under the provisions of para. 2, Circular Order 1st July 1842, made applicable to the mofussil courts under Circular Order 13th April 1847.

THE 14TH MARCH 1849.

Nos. 66 and 68 of 1849.

*Appeals against a decree passed by the late Principal Sudder Ameen, Moulvee Neamut Ally Khan, on 19th July 1849.*

No. 66,—Gobind Sahi and three others, (Defendants,) Appellants,  
No. 68,—Sham Lall Miser and two others, (Defendants,) Appellants,  
in the suit of Sheikh Mowlah Buksh, (Plaintiff,) Respondent,

*versus*

The Appellants and sixteen others, Defendants.

THIS suit was instituted, on 31st May 1848, to recover the sum of 2531 rupees, 1 anna, 7 pie, being the amount of Government revenue paid in excess for the talooka Selampore Doomariah, from 1245 up to 1254 Fusly.

The plaint sets forth that the plaintiff, as co-sharer with the defendants in this talooka, has paid up to the amount now claimed in excess of his own revenue liabilities. The revenue for 8 annas, of Mircha Gundah, 8 annas of Khugpoorah and the whole of Bishenpore Sooda, component villages of the talooka, and belonging to the defendants.

Gobind Sahoy and three others, defendants, in reply, plead that the plaintiff ought to have specified the extent of share, and balance

due from each defendant; that their revenue liabilities amount to 31 rupees, which they have paid continuously and in full.

Bridjoo Lall defendant, in reply, pleads that he has paid his revenue, partly direct to Government and partly to the agent of the plaintiff.

Konyah Lall and Ram Kissoon, defendants, plead that they have paid partly to the agent of the plaintiff and partly to the Government through the party who held a farm of a portion of their share.

Herah Lall Misser defendant objects that his revenue has been paid by the party forming his share in the estate; that the plaintiff ought to be nonsuited for not stating, in his plaint, the amount for which each share is liable.

Sham Lall and two other defendants plead as above, and the other defendants do not defend the case.

The principal sudder ameen decrees the whole claim collectively against the defendants, because it is proved that the plaintiff occupied in the estate to the extent stated by him, and that he has paid the amount of revenue now claimed by him in excess of his own liabilities, and that he has allowed for the revenue payments made by the defendants.

In appeal, Gobind Pershad and others plead that they are only liable for 31 rupees yearly; and it is on record that they have paid up to this amount, and Sham Lall and his party appeal on the ground that the farmer who farmed their share of the estate has paid their revenue liabilities as he covenanted to do in his kubooleut filed in this suit.

The point to be decided in appeal is whether a decree collectively against the defendants is right or wrong, that is, whether the lower court ought not to specify to what extent the appellants are individually liable.

#### JUDGMENT.

The reasons given for this decree are unintelligible to me.

The principal sudder ameen observes that this is an undivided estate, and the shares of the proprietors cannot be defined, and yet admits the definition of the share of the plaintiff, and passed a decree collectively against all the other sharers, because their vakeels allow that if two annas out of the revenue for this estate was in arrears the whole talooka would be liable to sale. I reverse this decree and direct a re-investigation, in order that the lower court may determine the exact amount for which each of these appellants is liable, and correct the obscurity which clouds the reasoning in which this decreetal order is based, and order a refund of stamp value.

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THE 14TH MARCH 1851.

No. 65 of 1849.

*Appeal against a decree passed by Moulvee Neamut Ally Khan, late Principal Sudder Ameen, on 10th July 1849.*

Domah Singh and Beik Dharee Singh, (Defendants,) Appellants,  
*versus*

Bundhoo Singh, (Plaintiff,) Respondent.

THIS suit was instituted on the 6th March 1848, to recover possession in 1 a. 1 p.  $1\frac{1}{2}$  g.  $\frac{1}{2}$  c. out of 2 as. 13 g. 1 c. in mouza Kulianpore Bustee, by setting aside a deed of bye-meadee, dated 6th Bhadoon 1236 Fusly, and to recover mesne profits amounting, principal and interest, to rupees 1300, 15 annas. Suit valued at rupees 1529, 15 annas, 6 pic.

The plaint is that this share in Kulianpore Bustee was conditionally mortgaged by the plaintiff and his brother Maheeput Singh to the defendant Domah Singh, in satisfaction of 5100 rupees as his portion of principal, *plus* nine years' interest in advance in a debt of 15,000 rupees, due from the plaintiff to him and other parties; that the defendants have jointly occupied the estate since 1237 Fusly; that during their occupancy they have realized from the estate the amount now claimed in excess of the sum for which it was pledged to Domah Singh; that as the heirs of Maheeput Singh will not join in this action, the claim is for the half share of the plaintiff.

The defendants, in reply, admit the mortgage, and plead that they have not realized from the estate the interest on the sum for which it was mortgaged, and that the plaintiff ought to be nonsuited under Circular Order, 31st August 1832, for having preferred this suit independent of his co-claimants, the heirs of Maheeput Singh.

The principal sudder ameen decrees the claim to the plaintiff, being of opinion that the suit of the plaintiff for his share is consistent with the law, and that the jumnaabundee in which the plaintiff values his claim for mesne profits, has been legalized by the court in the suit of Suddee Singh and others, and this proves the amount of income derived from the estate by the defendants from 1238 up to 1253 Fusly, and the evidence of the witnesses proves the valuation of the plaintiff for the income of 1254 Fusly to be correct.

In appeal, the defendants urge their former pleas.

The point to be decided in appeal is whether or no the respondent makes good his claim.

#### JUDGMENT.

In the suit of Suddee Singh and others *versus* the present appellants, the same pleas were urged as in the present instance. They were all rejected, and a final decree passed against the appellants.

There could not be a better basis than the one on which the lower court has passed this decree in favor of the respondents. I therefore uphold this decree, and dismiss the appeal, without issuing notice to the respondent.

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THE 15TH MARCH 1851.

No. 70 of 1849.

*Appeal against a decree passed by the late second Principal Sudder Ameen, Syud Mahomed Mohamid Khan, on 24th July 1849.*

Baboo Ram Lall Chowdree, (Plaintiff,) Appellant,

*versus*

Bhyrub Dutt Jha, first party, Bholanath *alias* Bidjnath Jha, second party, and Kishneemun Jha, third party, (Defendants,) Respondents.

THIS suit was instituted on 15th June 1848, for absolute possession in two portions of mangoe topes, some useless trees and clumps of bamboos, appertaining to mouza Kuttownah, and to set aside a deed of sale, dated 9th Chyte 1251 Fusly, and an *exparte* decree had upon it, and passed by a moonsiff on the 11th May 1848. Suit valued at 30 rupees, the amount of purchase money specified in a deed of sale, dated 25th Assin 1250 Fusly.

The plaint is that the defendant Bholanath sold the property now claimed to the plaintiff under a deed of sale, dated 25th Assin 1250; that possession was duly rendered; that it now appears that the defendant Bhyrub Dutt Jha, on the plea of his having purchased this property from Kishneemun Jha defendant, under a deed of sale 9th Chyte 1251 Fusly, has obtained an *exparte* decree for possession; that Kishneemun Jha has no right to the property which belongs to Bholanath, and was sold to the plaintiff.

Bhyrub Dutt defendant, 1st party, in reply, pleads that this suit is opposed to Clause 12, Regulation III. of 1793, inasmuch as it is an action to reverse a final decree; that the valuations of the suit is irregular; that the property now claimed belonged to Kishneemun Jha, and was sold to him; that these trees were planted by Dhurum Dutt Jha who died without lineal descent after having adopted Kishneemun Jha.

Bidjnath Jha defendant, 2nd party, confesses judgment. Kishneemun Jha defendant, 3rd party, in reply, denies the sale to Bhyrub Dutt, and pleads that the deed was forged, and an *exparte* decree obtained upon it against which an appeal is now pending; that the trees belonged to Bidjnath Jha.

The principal sudder ameen having upheld the moonsiff's decree in appeal dismisses this suit, observing that the deed of sale in favor of Bhyrub Dutt is registered, whereas the deed of sale to the



plaintiff is not registered though proved by the evidence of the witnesses of the plaintiff; that there is no proof sufficient to set aside the deed of sale to Bhyrub Dutt, which has been declared *bonâ fide* in the suit decided by the moonsiff; that the ikbal dawa on the part of the defendant, Bidjnath, is of no use, as the property which he admits the sale of had been declared to be a valid sale to Bhyrub Dutt.

In appeal, the plaintiff urges that Bholanath who sold to him and Kishneemun Jha who sold to Bhyrub Dutt are own brothers, and under a deed of division between them this property fell to the lot of Bholanath, who was therefore enabled to sell it. The fact of non-registering is not sufficient to vitiate the deed of sale; the sale to Bhyrub Dutt was collusive, and according to the decree of the Sudder Dewanny, dated 7th September 1847, in the case of Gunesh Dutt *versus* Ramdyal Singh, the deed of sale and the decree had upon it ought to be set aside; that the plaintiff is in possession of the property claimed.

The point to be decided in appeal is whether of these two deeds of sale is valid.

#### JUDGMENT.

I see no reason to disturb this decree, as I find no proof either positive or presumptive, to doubt the validity of the registered deed of sale executed between Bhyrub Dutt and Kishneemun Jha.

I therefore dismiss this appeal, and uphold the decree, without issuing notice on respondent.

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THE 22ND MARCH 1851.

No. 52 of 1849.

*Appeal against a decree passed by Kaze Mahomed Allum, Moonsiff of Koelee, on 15th January 1849.*

Mukhun Singh Raut, (Defendant,) Appellant, in the suit of Mr. Baddeley, (Plaintiff,) Respondent,

*versus*

Appellant and Nowrungee Rout, Defendants.

THIS suit was instituted, on 29th July 1848, to recover the sum of 6 rupees, 14 annas, 6 pie, being the amount, principal and interest, of rent balances for 1 beegah, 17 biswas of cultivation in the village of Jullah Mohummudpore Ghazee, accruing from 1254 Fusly up to the 12 annas kist of 1255.

The plaint is that this village was held under the Court of Wards, and leased to the factory of Poopree; that the defendants cultivated on the farm, and are in default as above claimed.

In reply the defendants plead that Mukhun Singh is the cultivator, and that he has paid his rents according to a pottah granted to him by a former sub-tenant of the village, and that a balance or account is in his favor.

The moonsiff exempts three annas as an illegal demand, and decrees the remainder of the claim against Mukhun Singh, as he considers that the evidence of the putwarry and the master, ryot and the other witnesses for the plaintiff, prove the balances against the defendant, who can produce no documentary evidence to prove payment.

The defendant urges, in appeal, that his vakeel in the lower court did not call on him to furnish his receipts to prove payment.

These receipts are not produced with the petition or moujbat appeal. The appellant was present in this court, and was called upon yesterday to furnish the receipts alluded to. To-day the appellant produces a receipt granted to Newajee Rout, which supplies no proof whatever that the balances now claimed have been satisfied. The point to be decided in appeal, is the liability, or otherwise, of the appellant for these balances.

#### JUDGMENT.

In the absence of any specific written agreement between parties in a suit of this nature, the evidence of the village authorities must of necessity rule the decision, and in this instance their evidence fully proves that these balances are due from the appellant, and the appellant has nothing to prove payment. I therefore uphold this decree, and dismiss the appeal, without issuing notice on the respondent.

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TUE 24TH MARCH 1851.

No. 54 of 1849.

*Appeal against a decree passed by Kaze Mahomed Allum, Moonsiff of Koylee, on 19th January 1849.*

Gopal Doss, (Plaintiff,) Appellant,

*versus*

Pirthee Singh and twenty-seven others, first party, and Bugwant Doss and ten others, iteatun, second party, (Defendants,) Respondents.

THIS suit was instituted on the 9th August 1848, to recover the sum of rupees 140, 8 annas, 6 pie, being the amount, principal and interest, of revenue paid in for mouza Gunshampore, for the year 1843.

The plaint is that the plaintiff, the proprietor of a 3 pie share in this village, borrowed from Brijbookhun Lall the sum of 81 rupees to make good Government balances due from the 15 annas, 3 pie

share of the defendants; that Brijbookhun obtained a decree against the plaintiff for the money lent, and the plaintiff has paid rupees 130, 5 annas, 7 pie, in satisfaction thereof; that the plaintiff's share in this village, together with the share of Musst. Doolhun and others, making in all 2 annas, 19 gundahs, 2 krants, was held in farm by Bunseedhur; that the revenue in this share was 63 rupees, 2 annas, 7 pie, out of which Bunseedhur paid 57 rupees, 9 annas, and 5 rupees, 9 annas, 7 pie was due from the plaintiff; that the suit is for the balance paid in excess of the liabilities of this 2 annas, 19 gundahs, 2 krants share.

Talawah Singh and two others, defendants, in reply, plead that their share was not in default; that they gave no authority to the plaintiff to borrow this money from Brijbookhun Lall, and that, as defendants in that action, they were exempted from liability. Gowrah Koer, and two others, iteatun defendants, in reply, plead, that they hold an 8 anna share in this estate, and the other 8 annas is the property of the plaintiff and other defendants; that their revenue liabilities have been duly paid. Pirthee Singh and twenty-one others reply that, as 5 annas, 3 cowrees share in this estate, they have paid up their revenue.

The other defendants do not defend the suit.

The moonsiff dismisses the suit, because he considers that the plaintiff has made a wrong statement as to the amount of balances due from this estate, the actual balance being 134 rupees, 7 pie, and not 81 rupees; and that it is proved that the plaintiff held a lease of the 3 annas of Kasheenath during the year, when these balances occurred, and was, therefore, himself answerable for the amount of revenue paid in.

In appeal, the plaintiff urges his former pleas, and adds that the share of Kasheenath was held by his widow, Musst. Boodhun Koer, one of the defendants iteatun, who pleads that her share of revenue has been paid; that he has paid in 81 rupees in excess of his own revenue liabilities without reference to the amount of actual balances.

The point to be decided in appeal is whether the reasons given by the moonsiff for dismissing this claim are sufficient.

#### JUDGMENT.

The points to be decided on this case are, first, to what amount the appellant has paid in excess of his own revenue liabilities, and secondly, who are the parties responsible to make good the excess. The moonsiff is directed to retry the case on the points indicated above. The *difference* between the actual balances due from the estate, and the amount of revenue paid in by the appellant in excess of his own liabilities, has nothing to do with the case, nor can I find any thing to show that the appellant did occupy beyond the

amount of share stated in the plaint. I therefore consider the investigation incomplete, reverse the decree, and direct a re-investigation of the case, and a refund of stamp value to the appellant.

THE 25TH MARCH 1851.

No. 56 of 1849.

*Appeal against a decree passed by Baboo Bishen Lall, Moonsiff of Dulsingh Serai, on 20th January 1849.*

Duttooree Mathoo, Soogah Mathoo and Surubjeet Mathoo,  
(Defendants,) Appellants,

*versus*

Sheikh Abdool Bakee, (Plaintiff,) Respondent.

THIS suit was instituted on the 10th January 1848, to recover the sum of rupees 31, 9 annas, 3 pie, balance of rent for cultivation in mouza Bandah, accruing from 1250 up to 1253 Fusly.

The plaint is that the defendants cultivated in this village, of which the plaintiff is a  $4\frac{1}{2}$  anna sharer, and are in balances on account of plaintiff's share to the amount now claimed according to the village account.

The defendants, in reply, plead that Duttooree Mathoo is the real cultivator, and that the other defendants, his two sons, have no interest; that as the plaintiff has co-sharers in his  $4\frac{1}{2}$  anna share, and they are not plaintiffs, the case ought to be nonsuited; that the rent has been paid in excess of liability.

The moonsiff is of opinion that the allegation of the defendant, that the plaintiff has co-partners in his share, is untrue; for, had that been the case they would have appeared as objectors in the suit; that the arrears now claimed are proved on evidence; that the defendants have failed to establish the validity of the receipts produced in proof of payment, claim is therefore decreed against the defendants.

In appeal, the defendants urge their former pleas, and add that it was the delay of the court, which led to their witnesses not staying to have their depositions taken.

A third party, Musst. Nussirun, now comes forward and declares to be co-sharer with the respondent.

The point to be decided in appeal is the liability, or otherwise, of the defendants to make good the balances claimed from them by the respondent established.

#### JUDGMENT.

The case appears to have had a full hearing, and the appellants have failed to support their defence, whereas the evidence on the part of the prosecution clearly establishes the claim of the respondent to be a just one. I therefore uphold this decree, and dismiss the appeal, without issuing notice to the respondent.

THE 25TH MARCH 1851.

No. 61 of 1849.

*Appeal against a decree passed by Moulvee Syud Muneerooddeen Hossein, Moonsiff of Mowah, on 27th November 1848.*

Gonesh Dutt Jha, (Defendant,) Appellant, in the suit of Goshein Ram Churn Barthee, (Plaintiff,) Respondent,

*versus*

Appellant Kalceekha Jha and Puryag Jha, Defendants.

THIS suit was instituted on 27th July 1848, to recover rupees 89-11-3, being the amount, principal and interest, of arrears of revenue for 14 bgs. 7 b. 13½ ds. of cultivation in mouza Gopalpore, chuck Jyee and chuck Ramdoss, accruing from 1253 up to 1255 Fusly.

The plaint is that the plaintiff holds a 4 anna share of this estate in farm, and according to the village accounts the defendants, who cultivate in the farm, are defaulters to the amount claimed.

The defendant Gonesh Dutt alone replies that he is a proprietor in this estate; that he cultivates only 9 bgs. 6 b. 9 d.; that he is indebted only 20 rupees, 3 pie to the plaintiff, on account of this farm of the 4 annas share; that this sum has been tendered to and refused by the plaintiff.

The moonsiff considers that the amount claimed is fully proved against the defendants, and as in the former suit between these parties a final decree has been passed in favor of the plaintiff for the same rate and extent of cultivation, the present claim must, therefore, be decreed against the defendants.

In appeal, the defendant Gonesh Dutt urges that the decree is passed on insufficient evidence, and against parties who have no interests at stake, and the amount decreed is in excess of the rates recorded in the Government rent roll.

The point to be decided in appeal is whether the claim is proved, and, if so, is the decree good against the three defendants?

#### JUDGMENT.

The decree in the former suit between these parties is final, it establishes the present claim in all particulars, and must rule the decree in this suit.

The other defendants did not defend the action in any way, and are not co-appellants. I therefore see no reason to disturb this decree, which is upheld, and the appeal dismissed, without issuing notice on the respondent.

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THE 27<sup>TH</sup> MARCH 1851.

No. 65 of 1849.

*Appeal against a decree passed by Pundit Datah Ram, Moonsiff of Teigrah, on 26th January 1849.*

Chundun Rai, (Defendant,) Appellant,

*versus*

Rampershaud Rai and Kashee Rai, (Plaintiffs.) Respondents.

THIS suit was instituted, on the 24th November 1848, to recover 17 rupees, 4 annas, 10½ pie, being the amount, principal and interest, of balances due for cultivation in Nepuriah Furreedunpore Modoo, accruing in 1254 and 1255 Fusly.

The plaint is that the plaintiffs held 14 annas, 3 pie of this estate in farm as the share of one Praim Rai from 1244 F. S., and the defendant cultivated on the farm, and is a defaulter according to the village account to the amount now claimed.

The defendant, in reply, pleads that the plaintiff only farms 14 annas, 1 pie of the estate; that he is a proprietor and cultivator, and has paid 2 annas in excess of the rightful claim of the plaintiff.

Three parties petition in support of the statement of the plaintiffs as regards the extent of his farm, and claims interest in the estate, and a fourth party objects to the statement of the claim of one out of the three.

The moonsiff decrees 16 rupees, 11 annas, 5 pie, and 18 krants, to the plaintiff, which he considers to be the amount of the balances proved by the accounts and village authorities to be due to the plaintiffs as farmers of 14 annas, 1 pie of the estate.

In appeal, the defendant pleads that the moonsiff has recognized his objection as to the extent of the plaintiff's farm; but has not done so as regards his objections to the extent of his cultivations and rates of rent.

The point to be decided in appeal is simply whether these balances are proved, or not, against the appellant.

## JUDGMENT.

There is no specific written agreement between these parties, the claim can therefore only be decided by the accounts and evidence of the village authorities, which, in my opinion, establish the claim of the respondents. I therefore uphold this decree, and dismiss the appeal without issuing notices on the respondents.

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THE 27<sup>TH</sup> MARCH 1851.

No. 68 of 1849.

*Appeal against a decree passed by Pundit Dutah Ram, Moonsiff of Teigras,  
dated 1st February 1849.*

Syud Bishanot Alli, (Plaintiff,) Appellant,

*versus*

Chadee Rai and eight others, (Defendants,) Respondents.

THIS suit was instituted on the 7th September 1848, for possession in 100 clumps of bamboos in Mukhdooempore, and to recover 64 rupees the value of bamboos cut in 1255 Fusly. Suit valued at 126 rupees.

The plaint sets forth that the plaintiff purchased these bamboo clumps as the right and interest of Chadee Lall and three others (defendants,) sold in satisfaction of a decree had against them; that no possession has been rendered, and these defendants, aided by the other defendants, cut and carried off bamboos, in which the plaintiff has a rightful claim for 1000, at the rate of six rupees per hundred.

One of the defendants, who is a chowkeedar, and was placed in charge of the plaintiff's interest in these bamboos, confesses judgment.

The defendants, Sheik Budeedooden and others plead, in reply, that they were no party to the cutting and carrying off the bamboos in question.

The defendants Chadee Lall and the three others with him, plead that the land on which these bamboos grew belongs to them, and it was only their ryottee share in these bamboos, which were sold and purchased by the plaintiffs; that subsequent to their being sold off they have not cut any bamboos. One of the defendants does not defend the suit.

A third party are claimants for the land on which these bamboos grow.

The moonsiff decrees to the plaintiff possession in a ryottee right over these bamboo clumps, and 16 rupees as the value of the ryottee share in bamboos proved to have been cut and carried away by Chadee Lall and his three partners, and exempts the other defendants from liability.

In appeal, the plaintiff urges that his full claim for damages is made out of both by the evidence of his own witnesses, and the result of the investigation of an ameen duly appointed by the moonsiff to make a local enquiry.

The point to be decided in appeal is simply how much the appellant is entitled to an account of his share in the bamboos cut and carried away by the respondents.

## JUDGMENT.

The moonsiff has given no reason for rejecting the evidence of the witnesses for the prosecution, nor, after having admitted the

validity of the investigation of the ameen's, as respects the fact of the respondents having cut and disposed of the bamboos for rejecting the result of his enquiry as to the extent and value of the bamboos which tallies with the claim of the appellants. The moonsiff conjectures that 300 bamboos, at the rate of 5 rupees per hundred, is all that the appellant is entitled to. The moonsiff is, therefore, directed to review his judgment in the case as above indicated, and the decree is reversed, and a refund of stamp value to the appellant ordered.

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THE 28TH MARCH 1851.

Nos. 58, 59 and 60 of 1849.

*Appeals against a decree passed by Baboo Bishun Loll, Moonsiff of Dulsing Serai, on 22nd January 1849.*

No. 58,—Mudkhur Loll and twenty-nine others, (Defendants,) Appellants,

„ 59,—Runglall Singh, (Defendant,) Appellant,

„ 60,—Sheodial Singh and three others, (Plaintiffs,) Appellants,  
in the suit of Shoomrun Loll and fourteen others,  
(Plaintiffs,) Respondents,

*versus*

The Defendants, Appellants, and Rambuksh Singh and six others, iteatun, Defendants.

THIS suit was instituted on 13th April 1847, to decide a title and to obtain possession in 27 b. 17 b. 17 d. out of 35 b. 12 b. 13 d. of land, the half of Dooab called Chour Rutnee, appertaining to the villages of Mudhunpore Kooer and Mohumudpore Bassoo, and to recover 19 rupees, 1 anna, 11 pie, mesne profits, and to set aside an agreement to arbitrate and a decision of arbitrators, and a proceeding in the survey department and a decision under Act IV., dated 26th May 1846. Suit valued at 298 rupees, 10 pie.

The plaint sets forth that the lands of Mudhunpore and Mohumudpore are adjacent but distinct; that Mohumudpore is the joint property of all the plaintiffs; that 1 a. 10 g. 1 c. 4½ d. in Mudhunpore belongs to the defendants iteatun Rambuksh Singh and others, and 6 as. 18 g. ¼ d. is the ancestral property of Sheodial Singh and three others, plaintiffs, and 7 as. 11 g. 2 c. 4½ d. is the property of the plaintiffs Shoomrun Loll and ten others; that the defendants Runglall Singh, Mudkhur Loll and two others, proprietors of mouza Bishenpore, have dispossessed the plaintiffs from the lands now claimed, on the plea that they have been ruled to belong to mouza Bishenpore by a decision of Runglall, who had been appointed arbitrator between Sheodial Singh



and three others of the plaintiffs, on the one side, and Mudkhur Lall and three others of the defendants on the other; that the other plaintiffs were no party to, nor cognizant of this arbitration by which 14 b. 14 b. 3 d. of land have been abstracted from Mudhunpore, and 20 b. 18 b. 10 d. from mouza Mohumudpore; that after exempting 7 b. 14 b. 16 d. as the share of the defendants iteatun, and the plaintiffs who were parties to the arbitration agreement, as proprietors in Mudhunpore, the claim is for 6 b. 19 b. 7 d. on the part of Shoomun Lall and ten others, plaintiffs, as proprietors of Mudhunpore, and for 20 b. 18 b. 10 d. on the part of all the plaintiffs as joint sharers in Mohumudpore.

The defendants Mudkhur Lall and nineteen others, in reply, plead that this land was ruled to their village of Bishenpore by the decision of an arbitrator lawfully agreed upon and appointed, and as no opposition was made to his decision within six months of its issue, it is barred now by Regulation XIII. of 1793 and Regulation VI. of 1813. More particularly too as the award has been confirmed and recognized both by the revenue and criminal authorities; that as the villages of the plaintiffs are undivided, the suit should be for the whole of these lands in dispute.

The defendant Runglall, in his reply, pleads that he was duly appointed arbitrator, and decided the case to the best of his reason, and that several of those who appointed him are dead, and no objection was ever made in their lifetime.

The four cautionary defendants, in their reply, support the statements of the plaintiffs. The remainder of the defendants do not defend the suit.

The reasoning by the moonsiff in passing this decree is very obscure, but amounts to this—there was no occasion for the plaintiff to sue for all the disputed lands, as it was only requisite for them to sue for the amount of land to which they considered themselves to be entitled; that the agreement to arbitrate is binding on the four plaintiffs, who were subscribing parties, and not on the others who did not do so; and that although in the agreement to arbitrate, and on the decision of the arbitrator, the lands of Mudhunpore alone are specified, yet as Mudhunpore and Mohumudpore are involved, the interest of the plaintiff Sheodial Singh and the three others with him are forfeited in Mohumudpore, as well as in Mudhunpore, and a decree is passed in favor of Shoomrun Lall and ten plaintiffs for possession in 6 bs. 19 bis. 10 d., as belonging to Mohumudpore, in all 19 bs. 7 bis. 17 d., with 13 rupees, 15½ annas as mesne profits, the claim for 8 bs. 10 bis., as belonging to Mohumudpore, is dismissed as the portion of Sheodial Singh and his party.

Three parties in the suit appeal against this decree.

Sheodial Singh and three others, plaintiffs, urge, in appeal, that their claim in the lands of Mohumudpore ought to be decreed to

them as their agreement, to arbitrate was only for the lands appertaining to Mudhunpore.

The defendants Mudkhur Lall and his party, urge in appeal, in addition to their former pleas, that the villages of the plaintiffs are ijmallee, and that the decree passed cannot be executed; that the moonsiff ought to have considered the arbitration to be binding for all the lands, or none at all.

The defendant Runglall, in his appeal, urges her former pleas, and declares that the lands in dispute, which were submitted to his arbitration, were those of Mudkhurpore on the one side, and Bishenpore on the other.

The point to be decided in appeal is whether the reasons given for this decree are sufficient or not.

#### JUDGMENT.

The plaintiffs declare to be co-partners in the undivided villages of Mohumudpore and Mudhunpore, and to have been dispossessed of 35 bs. 12 bis. 13 ds. of lands of their two villages by the proprietors of Bishenpore, under an agreement to arbitrate subscribed by four out of twenty-one of the co-sharers, and they exempted from their claim a portion of the land as the share of those four. Thus the plaintiffs are asking for a decree which cannot be executed.

The moonsiff has passed a decree exactly of this nature. The plaintiffs, in fact, are only one party, their interests is an undivided estate are in law one, and the same, the agreement to arbitrate must of necessity be binding on all, or none. Besides this I can find nothing on record to satisfy me; that the lands of Mohumudpore were involved in the dispute with Bishenpore, arbitrated by Runglall. I reverse this decree, and direct a re-investigation of the case, as indicated above, and if the moonsiff should be of opinion that, if the plaint, as it now stands, is cognizable, he is directed to quote law or precedent in support of his opinion—he will then consider whether in this joint undivided estate the agreement to arbitrate is binding on all the proprietors or not, and will state distinctly his reasons for separating their interest, should he still be of opinion that it is binding on the subscribing parties. The usual order is passed for a refund of stamps value to the several appellants.

THE 31ST MARCH 1851.

No. 72 of 1849.

*Appeal against a decree passed by Moulvee Syud Muneerooddeen, Moonsiff of Mowah, on 17th February 1849.*

Bugwant Narain Singh, (Defendant,) Appellant,

*versus*

Sookh Lall Rai and Munbode Rai, (Plaintiffs,) Respondents.

THIS suit was instituted on 21st June 1848, to recover the sum of rupees 15-11-6, being the amount principal with interest, of Government revenue paid in on account of mouza Nowalpore, Misrowleah, in A. D. 1841 and 1842.

The plaintiff is that the plaintiff accepted an advance of rupees 16, and made a conditional mortgage of his one-half anna share in this estate to the defendants with the *proviso* that the defendants should make good the Government revenue on the share; that the defendants have failed in their contract, and the plaintiff has been obliged to pay in Government revenue to the amount now claimed.

The defendant, in reply, admits the contract and pleads that in consequence of a dispute of the plaintiffs with one Goneish Thakoor, he came to a verbal agreement that the plaintiffs should themselves pay in the Government revenue in the mortgaged share; that he holds a four years' wasil-bakee from the plaintiffs to show that he has satisfied the plaintiff for their payments of the Government revenue.

The moonsiff decrees the claim to the plaintiff, as he considers that the defendant fails to prove payment to them of the Government revenue, which he had himself covenanted to make good; that the wasil-bakee is only signed by one of the plaintiffs, and his signature in the document does not tally with the signature to his vakulutnamah filed in the suit; that an annual receipt is required to prove payment by the defendant; that copy of the Government account current with the estate shows that the defendant paid in rupees 2, annas 12 of revenue in 1842 and 1843.

In appeal, the defendant urges his former pleas, and raises a new one by stating that the revenue paid in by him in 1842 and 1843, was on his own separate account as a proprietor in the estate.

The point to be decided in appeal is whether, or no, the appellant, instead of paying the Government revenue direct to the State, as he stipulated to do, *did* pay the amount to the respondents.

#### JUDGMENT.

I agree with the moonsiff in opinion that the appellant entirely fails in proving payment to the respondents, and therefore upheld the decree, and dismiss the appeal, without notice to respondents.

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THE 31ST MARCH 1851.

No. 42 of 1849.

*Appeal against a decree passed by Pundit Datak Ram, Moonsiff of Teigrah, on 10th January 1849.*

Uchumbit Chowdree and Durpee Chowdree, (Plaintiffs,  
Appellants,

*versus*

Dookah Chowdree, (Defendant,) Respondent.

THIS suit was instituted on 21st November 1848, to recover the sum of rupees 1-6-9, being the amount, principal and interest, of rent balances on a cultivation of 2 bs. 18 cs., in chuck Tillar, for 1256 Fusly.

The plaint is that the defendant cultivates as stated above on a farm of 8 annas in this village, of which the plaintiff held a sub-lease, and has fallen into balances of rent to the amount claimed.

The defendant admits the cultivation, and the balances, and pleads that as Runglall Chowdree claims these rents from him, he does not know which party to pay to and asks the court to direct him in the matter.

Runglall Chowdree, as a third party, petitions that he holds a sub-lease of the whole of this village, and has a suit pending against the defendant for these rents, and prays that the two cases may be heard and decided together.

The moonsiff decides that as the sub-lease of the whole village to Runglall Singh is established, this suit is only preferred to set aside the farm to Runglall, and is collusive. It must be dismissed.

The plaintiffs, in appeal, urge that the farmer, from whom Runglall alleges to have derived this sub-lease, had relinquished the farm, and the farmer to whom the village was relet had sub-leased it to them.

These appellants were third parties to the suit between Runglall and the defendant, and the decree in that suit is final. One of the appellants on the 3rd August 1849, filed a vakulutnamah, appointing a vakeel to put in a bazeenamah, which has not been done up to this date.

The point to be decided in appeal is whether or no the appellants make out their claim.

#### JUDGMENT.

This suit is evidently collusive, having for its object to oust Runglall Chowdree for a sub-lease of the whole village, the court has decided the sub-lease to the Chowdree to be a valid tenure in

another suit, in which the appellants were a third party, and might have appealed against the decree. The appellants do not even make Runglall, to whom these rents have been decreed, a respondent in the present case. I consider this appeal to be litigious and groundless, and therefore confirm the decree, and dismiss the appeal, without notice to respondents, and fine the appellants one hundred rupees for having instituted the appeal.

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# ZILLAH TWENTY-FOUR PERGUNNAHS.

PRESENT : H. T. RAIKES, Esq., JUDGE.

THE 3RD MARCH 1851.

Case No. 228 of 1850.

*Appeal from a decision of Mr. Wright, Moonsiff of Sulkea, passed on the 31st July 1850.*

Thupshya Ram Saha, (Plaintiff,) Appellant,

*versus*

Madhub Chunder Hore Barooye, (Defendant,) Respondent.

PLAINTIFF sued for balance of an account due to him from defendant, amounting to 29-10-10, for purchases and loans.

Defendant denied ever having any dealings with plaintiff, and asserted that the suit was instituted from malicious motives only.

The moonsiff states that plaintiff's books were filed and sworn to by plaintiff himself, but are not sufficient to prove the claim, and that plaintiff's witnesses did not satisfy him that they were speaking truth regarding their knowledge of this balance being due from defendant, as they were unable to state the nature and particulars of the dealings between plaintiff and defendant. Moreover, defendant satisfied the moonsiff that he was able to write his own name, and, therefore, the moonsiff deemed it most improbable that a balance of their accounts should be struck by plaintiff and defendant, and the latter not be called upon to attest it with his own signature.

The moonsiff therefore dismissed the suit.

The plaintiff appeals against the decision, and urges the impossibility of his books being wrong, as all his daily transactions are entered therein, and the balance of each day duly struck, and that any additions must be observable.

It appears that plaintiff has only two books as vouchers of the defendant's dealings, and these he has sworn to as correct ; but it is impossible for the court to judge from them under what real or imaginary circumstances the entries therein may have been made. It seems most probable that defendant was able to write his own name, and most improbable that plaintiff, on striking a separate balance of his account for his satisfaction and information, did not get his signature attached to it. Under such circumstances I do

not think it safe to trust alone to native evidence of the fact. I therefore cannot see any reasonable grounds for interfering with the moonsiff's decision, and therefore dismiss this appeal.

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THE 20TH MARCH 1851.

No. 1 of 1847.

*Original Suit.*

The Revd. Joze Maria Brandao, Vicar and Administrator of the Church and Talook of Seepore, Plaintiff,

*versus*

The Most Revd. Dr. Patrick Joseph Carew, Archbishop, Vicar Apostolic, the Revd. Ignacius Xavier Mascarenhas, the Revd. Eusebius Varalle, inhabitants of Calcutta, Dr. Thomas Olliffe and the Revd. Augustus Goiran, of Seepore, Defendants.

FOR possession of the church, pastor's residence and talook (with mesne profits) of Seepore, zillah Backergunge. Value of suit laid at 23,588-15-11.

This suit was originally instituted in the zillah court of Backergunge in 1846 A. D., and transferred for trial to this court by order of the Sudder. It was first brought to a hearing before my predecessor, and decided on the 9th of December 1847, particulars of which are fully recorded in the printed decisions of this zillah for that month. From the statement of the case there recorded, it appears that the church of Seepore and the property pertaining to it had, up to a certain time, been in the possession of the Augustinian Portuguese clergy settled in India, whose superior in this country had from time to time appointed a member of that body as resident incumbent, by whom the priestly offices of the church were performed, and the management of the property superintended, by whom also the local expenses were defrayed, and the surplus collections remitted to the prior of Bandel. That after the appointment of a vicar apostolic in India, that authority considering himself at liberty to deal with the church and property of Seepore as property of the church of Rome, virtually displaced the member of the Portuguese clergy, then officiating at Seepore, and under his own licence appointed one of the orthodox Roman Catholic priests in his room. This party having found means of securing possession of the church and talook, procured himself under color of the authority delegated to him by the vicar apostolic, to be recognised in a formal proceeding of the civil court as successor of the former incumbent and manager of the estate. An attempt was subsequently made by

the prior of Bandel, the Revd. Frè Simaõ de Conceceãõ, to recover possession by instituting a regular suit to set aside the court's proceedings in the above matter, praying that possession might be vested in himself; but the suit was dismissed for default, and in 1846 the present claim was instituted for possession of the church and landed property attached to it. The judge, who decided the suit in 1847, decreed in favor of plaintiff, on the ground that the Portuguese clergy had acquired a title by long possession to the Seebpore church and property pertaining to it, and that without the consent of these Portuguese, who founded and acquired this property, the interference with their patronage or with the property belonging to their church establishments by the vicar apostolic cannot be sanctioned by the civil courts of this country. Against this decision an appeal was preferred to the Sudder by the defendants, and on the 8th of May 1850 the case was remanded to this court, on the grounds that proper issues had not been fixed by the principal sudder ameen of Backergunge, who first entertained the suit. Neither had the judge of this zillah remedied that defect when the case came up to this court, but had passed his decision on issues not set forth in the proceeding recorded under Section 10, Regulation XXVI. of 1814, by the Backergunge authority.

The orders of the Sudder are fully detailed in the printed decisions for May 1850, page 181. The Court have therein recorded at length the particular issues of fact arising on the pleadings on both sides; but the first issue tried in this court at the present hearing arose out of a plea set forth by the defendants that the hearing of this suit is barred under Section 16, Regulation III. of 1793, the present cause having been already heard and determined by a civil court of competent jurisdiction.

This plea has been all along urged by the defendants, but does not appear to have attracted attention in this court or in the court of appeal. The Sudder merely allude to it as one among other issues, which should be raised; but it was evidently not pressed, or not much relied upon by the pleaders before the appellate court. I have now gone into the question to the best of my ability, and come to the conclusion that the plea is essentially correct, and the objection good against the present plaint.

The plea arises out of the decision given by the sudder ameen of Backergunge, in the regular suit instituted by the Revd. Frè Simaõ de Conceceãõ in 1839, and is traversed by the plaintiff, who avers that the cause of action in that suit is not the same as the present one, neither was any decision then given on its merits, the case having been dismissed for default. Plaintiff having neglected to file his replication.

It was first necessary to consider what was really the nature of the decretal order in the case referred to, as if found to be merely to the effect stated by plaintiff (a dismissal for default), the fact of



that claim being revived in the present action could be no bar to its re-institution.

I find that the sudder ameen then recorded, in his final proceeding, that the defendant had disputed the competency of the civil courts of this country to take cognizance of the matter brought before him by plaintiff's action; but that in consequence of plaintiff having failed to file any replication during six weeks, he dismissed the suit for that default. An appeal was then preferred by the plaintiff to the zillah judge, who, in his judgment, alludes to the reason stated by the sudder ameen for dismissing the claim, and then proceeds to record his own decided opinion that no suit of the nature brought forward by the plaintiff could be determined by the courts of this country under any circumstances, and therefore confirms the order, dismissing the case.

It has been plausibly argued in this court, that the order of the sudder ameen has only reference to the simple matter of default as the ground of dismissal, and that the judge could not travel out of the record, and turn his confirmation of that order into a formal discussion and decision of a point never taken up by the lower court; that consequently his declaration regarding the legal inadmissibility of plaintiff's claim must be treated as a mere "*obiter dictum*," having neither force nor authority in the present instance, and must not be allowed to act as any restriction on plaintiff's right to revive his suit.

I confess it appears to me a very nice point as to the legal effect of such a dismissal of the plaint, and whether it must be supposed that the general tenor and purport of the first order has been merged in and altogether superseded by the later decision of the higher court; yet after perusing the judge's order I cannot blind myself to the fact that when he recorded that judgment he deliberately intended it to be understood that plaintiff's claim, as arising out of ecclesiastical proceedings, was one which could not be entertained by the civil courts of this country, and that on that ground and on that belief, and not on account of the default, the judge confirms the order of dismissal passed by the lower court. It must also be borne in mind that the judge's decision was written before the enactment of Act XXIX. of 1841, and when by Section 10, Regulation IV. of 1793, it was incumbent to state the reasons at large, either for dismissing the suit of a plaintiff, or allowing him to prosecute it after he had neglected to proceed in it for six weeks, and the judge may therefore have intended to dispose of a point which appeared on the face of the pleadings, and seemed to him to call for his interference to stop at once further litigation between the parties. Believing then that the judge of Backergunge deliberately passed that order in a case brought before him in *regular* appeal; and, after consideration of the subject matter of the plaint, I do not think I am now at liberty to unravel the grounds or motives which led him to that determination, or that I can now question the legality of his

decision or examine its merits; but if the trial of this suit proves it to be a revival of the former plaint its progress must be stopt, lest the object of the former judgment be defeated.

In deciding the fact\* it is only necessary to ascertain whether the cause of action is substantially the same, although the form of the second action may differ from that of the first. In this case it is admitted that the parties to the former and present action represent, respectively, precisely the same interests; it is therefore only necessary to regard the object had in view by the parties in instituting the former and the present claim.

The present action is clearly stated to be for possession of the church pastor's residence and talook (with mesne profits) of Seebpore.

The former claim was to set aside the succession of the then defendant to the priestly office of the Seebpore church, and to recover possession of the same.

As it has been all along contended that the management of the talook is vested in the party holding the priest's office in the church, who resided on the premises, and discharged all functions, both lay and ecclesiastical, entailed upon the position, the possession of the church necessarily involved the management and superintendence of the property, and it, therefore, follows that both the present and the former claims are essentially the same. The source from which the plaintiffs in the two actions derive their titles is the same, the act which dispossessed them of the property is one and the same, and the object contended for is equally the same, namely, the recovery of the church incumbency and the proprietary right to the property pertaining or annexed to the office. I can see no substantial difference by which the aim and object of one action can be distinguished from the purpose of the other, the same facts are detailed in their histories, the same evidence and arguments are put forth and relied upon by either party, and precisely the *same points are to be determined*. The mere circumstances of a difference in valuation of the suits may be purely accidental, and cannot of itself outweigh the more essential matters of similitude adverted to.

Having then come to the conclusion that the decision in the former case, by not having been appealed from, finally disposed of the plaint then pending, and that the present action is in substance the same, I must dismiss the plaintiff's claim as one the subject matter of which has already been adjudicated upon and conclusively decided. It is therefore ordered, that this suit be dismissed, and the costs of defendants be paid by the plaintiff, with interest accruing thereon from date of decision.

THE 21ST MARCH 1851.

No. 231 of 1850.

*Appeal from a decision of Nilmony Mitter, Moonsiff of Kuddumgotchee,  
passed on the 17th August 1850.*

Sheikh Fuzullooddeen, (Defendant,) Appellant,

*versus*

Hydayut Ally and others, (Plaintiffs,) Respondents.

THE plaintiffs in this case sued to recover possession of their father's share of 2 beegahs of rent-free land, the possession of which they had been deprived of under the following circumstances.

Their father, Mahomed Mokee, and his cousin, Mahomed Allee, purchased the land in question from the grand-mother and mother of appellant in 1223 B. S., in the name of Mahomed Allee's wife, Nitukanessa; that on the death of their father plaintiffs succeeded him; but the appellant, who is the brother of Nitukanessa, in collusion with Mahomed Ameer, got up an Act IV. case against them, and the joint magistrate, considering Mahomed Allee to be the party in actual possession, dismissed appellant's claim; but under color of that suit plaintiffs were kept out of possession. Several parties were made defendants in this action; but it is only necessary to advert to the adverse defences of appellant, and Mahomed Allee and his wife.

Appellant averred that neither his grand-mother nor mother sold the land at all; that it is his ancestral land, and that he has succeeded to the property as the sole heir of his father.

Mahomed Allee and his wife allege the purchase of the property from appellant's mother and grand-mother, and deny Mahomed Mokee's share in the transaction.

The moonsiff states, in his decision, that certain parties cited as witnesses by both sides deposed to the purchase of the property as alleged by the plaintiffs, and that their father during his life had possession, and that a brick dwelling was erected by him and Mahomed Allee, in which they all lived; that appellant had failed to prove his version of possession, and that Nitukanessa could not substantiate the fact of her purchase. The moonsiff, therefore, decreed to plaintiffs possession of their father's share being one beegah of the property.

The only party who appeals against this decision is Fuzulluddeen, who pleads that his mother and grand-mother could not legally dispose of the property during his lifetime, and therefore that the alleged sale was illegal; that he, as the sole heir of his father, is entitled to it, and that plaintiffs could show no title.

From a consideration of this case it appears to me very evident that appellant has never been in possession of this property at any time, and was only made a defendant in this suit, because he had

constituted himself claimant for possession in the Act IV. case under color of which plaintiffs had been dispossessed. As appellant has been out of possession so many years, and has never brought forward any claim in the civil courts, he cannot now be permitted to interfere with any rights plaintiffs are entitled to from the long possession of their father. As it has been satisfactorily proved that the father of the plaintiffs purchased, and enjoyed possession of the property claimed jointly with Mahomed Allee up to the time of his death, I concur with the moonsiff in considering plaintiffs fully entitled to succeed to the share he held, and therefore confirm that decision, and dismiss this appeal.

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THE 21ST MARCH 1851.

No. 248 of 1850.

*Appeal from a decision of Beneenath Bose, Moonsiff of Manicktullah, passed on the 27th August 1850.*

Thomas Shepherd, (Defendant,) Appellant,

*versus*

C. Fordyce, (Plaintiff,) Respondent.

THE plaintiff brought this action, to set aside an order of the foudarry court passed under Act IV. of 1840, maintaining defendant in the alleged possession of some land on which plaintiff was erecting a boundary wall.

Plaintiff alleged that he purchased some garden and orchard ground, and a brick dwelling house standing thereon, from one Catherine Vergin, and after being placed in possession of the same he proceeded to knock down the old brick wall and godowns and offices on the southern side and removed the materials; but that when he commenced to rebuild the wall and a godown in the former foundations, the defendant Mr. Shepherd brought him before the foudarry court and got an order to stop his carrying on the wall to the east of the godown. He therefore brought this action to try the right to the site in question.

The defendant states that the ground in dispute belongs to him, and that the old wall was built by his mother; that it is not a continuation of the wall of plaintiff's godown, and would encroach on his property.

The moonsiff gives, in his decision, an analysis of all the evidence taken, and states that he also proceeded to the spot and examined the premises; that it was stated by the witnesses that formerly a boundary fence existed on the south side of the present disputed boundary; that the marks and traces of this fence are still visible; and that had the defendant really possessed land on the north of it, he would never have permitted this fence to exist; that, moreover, the land belonging to plaintiff and defendant was marked by

difference of elevation, the high land evidently pertaining to defendant's premises, and the lower portion to plaintiff's. That the defendant had also permitted plaintiff to remove the old wall, and appropriate the materials, which he would have been unlikely to allow had they been his property.

The moonsiff for these reasons considered the plaintiff justified in carrying on the wall in continuation of his godown wall, and therefore decreed to him a right of possession accordingly.

Shepherd has appealed against this, and after laying the same pleas as advanced in the court below, his vakeel wished to file a map of the premises in explanation of his client's right to the land in dispute, but such map was not authenticated in any way, and could not be received or considered in evidence, and was not therefore referred to.

This court observes that the witnesses cited by each side speak for the party summoning them; but I place every reliance on the local investigation conducted by the moonsiff in person who must have had the best means of ascertaining the necessary data for a safe decision, as the moonsiff describes himself as able to trace the marks of a former boundary fence, and that the wall erected by plaintiff is quite within its precincts, I consider this court cannot set up any opinion on better grounds, and I therefore see no reason to interfere with the judgment of the lower court, and confirm the same.

THE 26TH MARCH 1851.

Case No. 170 of 1850.

*Appeal from a decision of Baneemadhuk Shome, Moonsiff of Pattergotta, passed on the 14th July 1850.*

Hydurally Mullah and others, (Defendants,) Appellants,  
*versus*

Bydonauth 'Turkolunkar Bhuttacharjee, (Plaintiff,) Respondent.

SUIT for damages, laid at 150 rupees.

The plaintiff stated that on the 26th of Falgoun 1255, on the day of the dolejattr festival, he went to the village of Kalleepore to see the festival at the house of one Rajeeblochun; that many persons were assembled there and the going men sprinkling each other with red powder; that the defendant Fuzlall came up with a cudgel and began beating the others on which plaintiff remonstrated with him, and defendant's father and uncle and others then came up, interfered in the matter and used towards plaintiff abusive and insulting language, and even went so far as to take off their shoes and threaten to beat him. Being much terrified at their behaviour plaintiff ran off, and, considering himself degraded by their acts, he sues them for the indignities put upon him, and lays the damages at 150 rupees.

The defendants deny these statements, and attribute the action to the instigation of another party with whom they are at variance; they also aver that plaintiff is a person of no consideration or position, and is not entitled on such a representation of himself to maintain an action of this nature.

The moonsiff, in his decision, considers it proved that insult and indignity were offered to the plaintiff by the defendants, the mullahs, as averred by him; and that he is entitled to some pecuniary compensation for the loss of respectability in proportion to the position and respectability previously enjoyed by him, and as the title of Turkolunkar had been conceded to him by his professional brethren the moonsiff assessed the damages at 50 rupees.

Against this decision the defendants appealed, and though not pleaded by, then this court raised the issue in appeal as to whether this action being grounded solely on the plea of abusive language, could be maintained at all, or is barred by Section 18, Regulation III. of 1793. On this point the appeal was admitted, and came on for hearing this day.

The respondent's vakeel argued that his client having been abused by the defendants, and their shoes raised as if to strike or terrify him, such acts must necessarily have somewhat degraded him and lowered him in the estimation of his equals. I do not, however, find that the plaintiff has any where alleged this, or that he has indeed at all referred to *after* consequences as proofs of any injury having accrued to him from the defendants' acts. His story simply details the occurrence of a quarrel, and that abuse under the general term of গালি গানাজ was addressed to him, together with thrills of "making him eat things forbidden by the shastres." Such conduct on the part of the defendants was clearly cognizable by the criminal courts, under Section 8, Regulation IX. of 1793, which are therein directed to hear and determine complaints for petty offences, such as abusive language, &c.; but the interference of the civil courts in such matters is prohibited by Section 18, Regulation III. of 1793, and can only be applied when redress is sought for some injury as a consequence resulting from or alleged to be the effect of the criminal acts imputed. In this case no such grounds of action are pleaded; the injury averred lies in the offence itself, and the complaint should have been preferred to the court empowered to receive it. I therefore decree this appeal, and declare the plaintiff liable for the costs of this suit in both courts.

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THE 26TH MARCH 1851.

No. 264 of 1850.

*Appeal from a decision of Neelmony Mitter, Moonsiff of Kudumgotchee, passed on the 24th September 1850.*

Kootubuddee Mundul, (Defendant,) Appellant,

versus

Joynarain Kurmocar, (Plaintiff,) Respondent.

THE plaintiff relates that he holds a part of 26 beegahs of land in the village of Sonatikre, which Bissonauth Biswas attempted to annex to his lands of mouza Bellasee, and, failing in this, set up the defendant, Kootubuddee Mundul, as kutkinadar, who, pretending that the defendants, Gocool Bissoo and Teetoo, were ryots of the land and in arrears to him for the rent of 1254 B. S., attached the crops through the assistance of the police, and obliged plaintiff to put in security to procure their release. That only 8 of the 26 beegahs were restored without damage and removal of the crops, and therefore he and the other holders (in separate actions) sued all the parties concerned for the value of the crops lost by Kootubuddee's illegal acts, as the case they had instituted before the collector had been struck off without coming to any investigation.

Kootubuddee admitted the attachment and distraint; but averred that the parties from whom he claimed arrears were the ryots in possession to whom he had leased the land for the years 1253-54-55, and the attachment was therefore legal; that, however, he had only distrained and removed the crops from 12 beegahs of the lands referred to in these cases and had restored 14 beegahs untouched.

The parties referred to as proprietors by the plaintiff and defendants in this case, filed replies favorable to the respective parties who hold under them.

The moonsiff considered the evidence of the witnesses cited by defendant as contradictory of each other, and of the statement of facts set forth by their principal. The kubooleut put forth by him purports to have been taken on the 4th Bysack 1252, a full year before the three years' lease to the ryots commenced, a circumstance very unlikely to be true, and quite opposed to the general practice in such cases. From the whole nature of the case the moonsiff considered the plaintiff's claim was a just one, and that Kootubuddee had in reality never had any right or possession of the lands in question, and had had recourse to the process of attaching the crops as a stratagem to obtain possession of the land. A decree was therefore given against him for the value of the crops claimed.

Kootubuddee has appealed against this decree, first, urging that the plaintiff in this and four other suits against him had brought only one case under Regulation V. of 1812, in the revenue court;

that the moonsiff had entertained suspicion regarding the kubooleut, because it was dated one year before the commencement of the lease, which it was easy enough to see must have been some mistake, and that the witnesses cited by him are wrongly stated to have given contradictory evidence, and lastly, that plaintiff had not proved how many beegahs of the crops had been damaged or to what extent.

I consider none of these objections are really tenable. The plaintiff in this and the other suits alluded to, were acting against one and the same attachment, and preferred their complaint to the revenue authority on the same grounds, and tendered the security required by the law; the case appears never to have proceeded further, and must have been one under Act X. of 1846. I do not consider the plea urged by appellant is any bar to their bringing a regular action separately to recover the value of their crops, and to prove his attachment to have been illegal. Regarding the inference drawn by the moonsiff from the unusual dating of the kubooleut, I deem it under the circumstances a reasonable one, and appellant's explanation as insufficient. There is no doubt also that his witnesses contradict each other, and do not support the defence set up by appellant in a satisfactory manner. As to the plaintiff having failed to prove the number of beegahs, which were really damaged by appellant's acts, I am fully of opinion that appellant having attached the crops, and that act being shown to have been illegal, it was incumbent on appellant to show that he had restored to the plaintiffs such portion of their property uninjured as he alleges himself to have done; in the absence of any such proof being tendered by appellant the lower court was justified in drawing the best conclusions it could from the facts before it. This has been done apparently on the statements made before the revenue courts and the ameen, and I see no reason to interfere with any part of the lower court's decision. This appeal is dismissed.

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THE 26TH MARCH 1851.

No. 265 of 1850.

*Appeal from a decision of Neelmony Mitter, Moonsiff of Kudumgotchee, passed on the 24th September 1850.*

Kootubuddee Mundul, (Defendant,) Appellant,

*versus*

Ramcoomar Ghose and others, (Plaintiffs,) Respondents.

THE circumstances of this case are precisely similar to those of No. 264, decided this day, and the same remarks and orders are applicable to it.



THE 26TH MARCH 1851.

No. 266 of 1850.

*Appeal from a decision of Neelmony Mitter, Moonsiff of Kudumgotchee,  
passed on the 24th September 1850.*

Kootubuddee Mundul, (Defendant,) Appellant,

*versus*

Teeluck Mundul and others, (Plaintiffs,) Respondents.

THE circumstances of this case are precisely similar to those detailed in No. 264, decided this day, and the same remarks and orders are applicable to it.

THE 26TH MARCH 1851.

No. 267 of 1850.

*Appeal from a decision of Neelmony Mitter, Moonsiff of Kudumgotchee,  
passed on the 24th September 1850.*

Kootubuddee Mundul, (Defendant,) Appellant,

*versus*

Prem Chand Ghose and others, (Plaintiffs,) Respondents.

THE circumstances of this case are precisely similar to those detailed in No. 264, decided this day, and the same remarks and orders are applicable to it.

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THE 26TH MARCH 1851.

No. 268 of 1850.

*Appeal from a decision of Neelmony Mitter, Moonsiff of Kudumgotchee,  
passed on the 24th September 1850.*

Kootubuddee Mundul, (Defendant,) Appellant,

*versus*

Gobind Mundul and others, (Plaintiffs,) Respondents.

THE circumstances of this case are precisely the same as those detailed in No. 264, decided this day, and the same remarks and orders are therefore applicable to it.

THE 31ST MARCH 1851.

No. 174 of 1850.

*Appeal from a decision of Beneenath Bose, Moonsiff of Manicktullah,  
passed on the 17th May 1850.*

Byedunath Nye, (Plaintiff,) Appellant,

*versus*

Byddadhur Nye and others, (Defendants,) Respondents.

THE moonsiff states that this suit was instituted before the moonsiff of Potterghatta, but in consequence of plaintiff's brother being

the barber of the moonsiff of that station, the moonsiff doubted the propriety of his trying the suit, and referred the matter to the then judge, who directed the case to be made over for trial to the moonsiff of Manicktullah.

The plaintiff sues for possession of 2 beegahs, 5 cottahs of orchard ground, which, he alleges, was sold to him by one Monohur Nye on the 15th of Srabun 1252 B. S., for the sum of 21 rupces, and a kubala to that effect executed in his favor; that in the following month the deed was duly registered, and a pottah also procured by plaintiff from the zemindar and possession given him; but in the month of Chyte, having gone to the orchard to gather cocoanuts, he was opposed by the defendants and dispossessed of the lands.

Defendants, in reply to this statement, averred that he and his relatives had taken a lease of the land from the zemindar many years ago, when Monohur Nye relinquished it from inability to pay up his arrears of rent, and that plaintiff could not purchase the ground, nor had he ever had possession of it.

The moonsiff states that plaintiff failed altogether to establish proof of his own possession, or of Monohur Nye's at the time of the alleged sale; that his witnesses evinced complete ignorance on these points, and had no knowledge of the lands in the neighbourhood; that the defendant could not prove the fact of Monohur Nye's relinquishment; but that his own possession for some time and payment of rents were evident from the depositions of the witnesses and other circumstances corroborative of this point, and though the moonsiff did not believe that Monohur had ever had any interests, and therefore could not dispose of them to plaintiff, yet that impression was no prejudice to defendant's possession as the alleged successor of Monohur, and he therefore dismissed the plaintiff's claim.

Plaintiff urges, in his appeal, that his witnesses fully established his claim and proved his dispossession, that the two beegahs were a distinct and separate portion of Monohur's share, which he had sold to plaintiff, and from which the defendants had forcibly dispossessed him. That in a former suit instituted by him, during Monohur's lifetime, Monohur had filed a reply supporting and admitting plaintiff's purchase of this ground, and detailing how he had received it as part of his share of the family property, and held it distinct from the joint lands; that the moonsiff should have called upon defendant to prove the relinquishment of Monohur, and defendant's acquisition of the property now in dispute, and not relied upon the receipts for rent put in by defendant who had procured them in some manner from the zemindar's servants.

I have referred to the evidence of the witnesses and to all other matters pleaded by the appellant. His statement, at least as much of it as is supported by the depositions of the witnesses, is improbable and inconsistent, and I place no reliance on its truth. He avers

that he purchased the ground from Monohur in Srabun 1252, and was dispossessed in Chyte following. His witnesses say that he went in Chyte with several people accompanying him, and commenced gathering the cocoanuts and unripe mangoes, which the defendant opposed and prevented. This appears to have been the *only act* of ownership he ever attempted to exercise, and that attempt was instantly and promptly resisted by the defendant. There is no evidence whatever to show that Monohur, plaintiff's vendor, had been previously in possession or had any right to dispose of the ground; until some proof of this was forthcoming, I am of opinion, proof of defendant's possession at the time this dispute arose was all that could be demanded from defendant, and that plaintiff was first bound to show that his own title was without exception before he could force defendant to produce one. I therefore see no reason to interfere with the moonsiff's order, and dismiss this appeal.

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THE 31ST MARCH 1851.

Case No. 182 of 1850.

*Appeal from a decision of Hurrish Chunder Mitter, Moonsiff of Lubshaw, passed on the 27th May 1850.*

Akbur Carreeghur, (Defendant,) Appellant,

*versus*

Molook Chand Daloll, (Plaintiff,) Respondent.

SUIT for the recovery of rupees 31-10, value of ornaments and a net.

Plaintiff avers that having been sentenced to imprisonment on a criminal charge he entrusted to the defendant, who is his son-in-law, certain ornaments and a net, which, after undergoing his term of imprisonment, he demanded of the defendant; but defendant, on pretence of having advanced to plaintiff 7 rupees, 8 annas, while in the Baraset jail, refused to surrender his property and unjustly detained it; that plaintiff never having desired defendant to advance this sum refused to pay it, and a dispute arose between them, which was subsequently referred to arbitration, when defendant consented to restore the property, but having failed to do so, plaintiff had recourse to this action.

Defendant denies these statements, and alleges that he advanced for plaintiff, in the foudarry case alluded to, the sum of 20 rupees, which plaintiff having failed to liquidate. Defendant was about to commence an action against him, but at the earnest solicitation of plaintiff then desisted and agreed to settle the matter amicably. That one day, in Kartick, plaintiff's female relations induced defendant's wife to come to their house, and there forcibly stripped her of all her ornaments; that defendant complained to the zemindar

by whose direction the whole matter was referred to arbitrators, by whose decision defendant was awarded the sum of 27 rupees as compensation for the ornaments.

The moonsiff decreed to plaintiff the sum claimed, and defendant has appealed against that decision; but as for the following reasons the moonsiff's decision appears to me erroneous and incomplete, I must remand it to him for review of judgment.

The moonsiff begins by observing that both plaintiff and defendant are near connections, and that as plaintiff was imprisoned in the Cagdlangah case, it is most probable he did, as stated by him, take shelter at first with his family in defendant's house, and did also entrust to defendant the ornaments, &c., claimed, who, when they were again demanded, in consequence of the disputes regarding the subsequent remittances, did not restore them to plaintiff; that, moreover, there is good reason to believe that either 7 rupees, 8 annas, as stated by plaintiff, or 20 rupees, as stated by defendant, had been advanced by him to assist plaintiff in his difficulties. But such a matter the moonsiff observes is altogether besides the present case, and cannot be taken up by him as being foreign to the controversy pending before him.

On this point I dissent from the moonsiff, as he considered that there were grounds for believing that the defendant had a set-off against the plaintiff's claim; it is quite according to the practice of our courts to take up and enquire into such matter, and I therefore remand this case that the moonsiff may do so. The moonsiff will draw up a proceeding under Section 10, Regulation XXVI. of 1814, with special reference to the averments made by both parties on this point, and on any others which he deems necessary, and then decide the case. The stamp fees to be returned to the appellant.

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ZILLA BEHAR.

PRESENT: FRANCIS LANTH, Esq., ADDITIONAL JUDGE.

THE 15<sup>TH</sup> FEBRUARY 1851.

No 21 of 1849.

*Appeal from a decision of Mullee Syed Mahomed Ibrahim Ali Khan Bahadoor, late Principal Sud. Amcen of Behar, dated 30th April 1849.*

Mullick Mahomed Deck, (Defendant,) Appellant,

*versus*

Mr. P. G. E. Tylor, (Plaintiff,) Respondent.

THIS suit was instituted on the 10th November 1848, to recover rupees 100, the value of articles of wearing apparel damaged.

The principal sudder aeen overruled all the objections raised by the defendant, and, considering the evidence of his witnesses of the plaintiff and otherwise insufficient, whilst the testimony of those of the defendant clearly proved the damage to have been caused by boat wherein forcing himself, conveyance and attendants, into the causing the same plaintiff's property was embarked, and, thereby, full amount claimed to be upset into the river, gave a decree for the damaged property in favor of the plaintiff, and directed the

Against this decree to be given up to the defendant. The defendant appeals, repeating the arguments fully supported before the lower court, and urging that his witness was not occasioned his statement to the effect that the damage of the accident, was by him, and that he was not present at the time was taken, also excused the owner of the cart, on which the property the damaged property laid him from all blame. The record shows corresponded with the description given in the plaint. The objections raised by the defendant, as to the box containing the property specified by the witness, and the value of each article not being of but little consideration of the plaintiff are, in my opinion, deserving of giving an opinion. The evidence of the only witness capable of giving an opinion on the subject, distinctly proved the several articles to have been new and unused, with two exceptions,



and having examined the prices affixed to the various articles noted in the plaint, I consider the valuation correct. On the evidence of the appellant's witnesses, no reliance can be placed, being, not only conflicting but, evidently tutored for the occasion, and, as the witnesses of the plaintiff fully establish the fact of the damage having been occasioned by the defendant, I see no reason for disturbing the decision passed by the lower court, which is hereby affirmed, and the appeal dismissed, with costs, without notice to the respondent.

THE 19TH FEBRUARY 1851.

No. 23 of 149.

*Appeal from a decision of Syed Tufazzul Hossein Khan, late Sudder Ameen of Behar, dated 14th July 1849.*

Meer Alleemoodeen and Sheikh Kyroollah, (Defendants,)  
Appellants,

*versus*

Mussts. Lutecfah and Hyatun, (plaintiffs,) Respondents.

1, Musst. Hyatun, wife of Khyrat Ali Khan; 2, Syed Gobur Ali; 3, Syed Shah Ali, and Syed Ahmud Hossein; 4, Musst. Sadu toonissa, Objectors.

THIS suit was instituted on the 20th January 1848, to recover possession, by cancelling a lease of 5 annas, 4 dams,  $8\frac{1}{2}$  cowries portion of mouzas Moheemoodeenpoor-Ginneer and Gilaanee, pergunnah Havelee Behar, and to recover rupees 176-10-6 principal and interest of rents due on a farm lease of the same, from 1252 to Poos 1255 F. S. Suit valued at rupees 838-8, but, subsequently, by including rupees 2301-16 krants, the amount of profits of a third share of the above previously omitted, amounted to rupees 861-9, 16 krants, also for the reversal of an order passed by the criminal authorities under Act IV. of 1840, dated 25th April 1848.

The plaintiffs state that the property originally belonging to Syed Mahomed Bakhur alias Meer Govanet and leased to the defendants, and Khyrat Ali Khan in 3 equal shares, according to a pottah, dated 18th Assin 1st 1249, up to 1257 I. S., on an advance of Sicca rupees 200, and a bond claim for a similar amount being deposited as security, was sold by Musst. Sadu toonissa, the daughter of the deceased proprietor, to the plaintiff, for rupees 1601, on the 8th September 1844, and their names duly registered as proprietors; that they frequently demanded the rents but to no purpose; that, after the death of her husband, Khyrat Ali Khan, Musst. Hyatun resigned her third share of the farm, on the 14th Aughun 1255 F. S., but the defendants will not give possession, or pay their own share of rents; that it was specially conditioned that the kubooleent that, in

the event of balances of rent accruing, the proprietor might resume possession and cancel the lease: as the defendants, therefore, have allowed balances to accrue, and, to save the property, the plaintiffs have paid the Government revenue to 1255 F. S., they sue to recover possession and for the cancelment of the lease; also to set aside the order of the criminal authorities under Act IV. of 1840, by which possession of the third share of Musst. Hyatun was confirmed to the defendants.

The defendants admit the correctness of the point relative to the lease and advance of money; but plead that, exclusive of that sum, the daughter of the original proprietor borrowed from them a further loan of rupees 887-8, and executed an ikrarnamah in their favor, under date the 22nd Sawun 1251 F. S., conditioning that both loans should be repaid at the same time on the date of the expiration of the lease in 1257 F. S., otherwise, the farm should continue, and in the interim she would not dispose of the property; therefore, until their claims were satisfied, she had no power to sell the estate, nor have the plaintiffs any right to resume possession or cancel the lease before the expiration of the term. They also declare Khyrat Ali Khan to have made over to them, by a deed of kutkeenah, dated 1st Poos 1254 F. S., his third share in the farm, and, as they have regularly paid the Government revenue demand of rupees 222-15-11½, as noted in the ikrarnamah, not a fraction of rent is due by them, but, on the contrary, they have surplus to receive from the plaintiffs. They also urge that various claims having been preferred in one suit the action should not be entertained, and that the suit was instituted on a stamp of inadequate value.

The plaintiffs replied that both the ikrarnamah and kutkeenah deed were forgeries; that at the time of the execution of the first, Musst. Sadutoonissa was in Gyah, and, therefore, could not have executed it in Patna, as pleaded by the defendants; that the Government revenue was not fixed till the 28th Maugh 1253 F. S., and, therefore, could not have been known in 1251.

Musst. Hyatun supported the plaintiffs relative to her having resigned her husband's share in the farm. Syed Gobur Ali represented himself to have a share in the farm, and that the plaintiffs had, at the instigation of their husbands, Meer Oomed Ali and Musafir Ali, who were brothers of his father, omitted all mention of his rights to the prejudice of his interests.

Syed Shah Ali and Syed Ahmud Hossein declared themselves entitled to the property, on the grounds that, at the time of their claiming the estate by right of pre-emption, and for which they brought an action against Musst. Sadutoonissa, the original sale of the property to her was declared invalid.

Musst. Sadutoonissa supported the plaintiffs, in respect to the sale, but urged that the purchase money had not been paid in full.

The sudder ameen observes that the parties had been recommended to come to an amicable settlement of their differences, to which the plaintiffs agreed, but defendants objected for various frivolous reasons; that, on consideration of all the circumstances of the case, he was of opinion that the deed of kutkeenah filed by the defendants was a fabrication; that, as the jumna of the estate was not fixed till 1253 F. S., its insertion in the ikrarnamah, dated in 1251 F. S., was fraudulent, and, therefore, rejected both documents; that as the resignation of the third share in the farm had been proved by witnesses and acknowledged by Musst. Hyatun herself, the plaintiffs were entitled to recover possession of that share of the property, and to receive rupees 191-7-5, being balance of rent due from the farmers of the other two shares; a decree to the above effect was, accordingly, passed, and the plaintiffs declared entitled to recover rents annually from the farmers till the expiration of their leases, and, then, on payment of two-thirds of the sum advanced and noted in the bond pledged as security, to recover possession of the remaining two shares of the estate.

In appeal, the arguments noted in the defendants' reply are repeated, and, further, that the original deed of sale, dated 1st April 1844, by Mahomed Bakhur, having been declared invalid by the sudder ameen in his decision of the 27th September 1847, and that order confirmed in appeal by the additional judge of Behar, under date the 15th July 1848, the deed of sale by Musst. Sadutoonissa to the plaintiffs cannot be considered of any value. Moreover, that the original document purporting to be Musst. Hyatun's resignation of her third share in the farm, was not produced in the lower court, and that the accounts, relating to that share produced by the plaintiffs, had been prepared for the occasion. The appellants also object to their being saddled with all costs of the suit.

The plea urged by the defendants, relative to the inadequacy of the stamps on which the suit was instituted, is decidedly incorrect, and advanced without any sufficient reason, and I, therefore, reject it. With respect to the two documents, the deed of kutkeenah and ikrarnamah, cited by the appellants as sufficing to establish their claim and disprove that of the plaintiffs, I quite agree in the opinion expressed by the sudder ameen. The first of these documents bears evident marks of fabrication, the month of Sawun 1st having clearly been altered to make it agree with that of the ikrarnamah. The writer of the contents deposes to his not being previously acquainted with the defendants in whose favor the deed was executed; that the witnesses thereto were all ignorant and illiterate people, and their signatures affixed by some other unknown party; whilst the witnesses themselves acknowledged that Khyrat Ali Khan did not sign the paper himself, though able to write. The ikrarnamah is also a fabrication; the subscribing witnesses have given very

conflicting and unsatisfactory evidence as to its execution, and are, therefore, unworthy of credit; but, exclusive of this, it appears from the testimony of witnesses, that Musst. Sadutoonissa was in Gyah on the date of the alleged transaction, and, therefore, could not have executed such a deed, and as the jumma of the estate was not fixed till 1253 F. S., it is very clear the information on that point embodied in the deed could not have been known in 1251 F. S., and, therefore, that the document is spurious, and must have been antedated to meet contingencies. The further plea advanced relative to the invalidity of the plaintiff's deed of sale, I consider, in all respects, incorrect and opposed to fact, and as the resignation of her share in the farm was acknowledged by Musst. Hyatun, and duly testified to by witnesses, I consider the order passed by the lower court just and proper, and, therefore, uphold it, and dismiss the appeal, with costs, without notice to the respondents.

THE 19TH FEBRUARY 1851.

No. 24 of 1849.

*Appeal from a decision of Syed Tufuzzool Hossein Khan, late Sudder Ameen of Behar, dated 10th July 1849.*

Meer Alleemoodeen and Sheikh Khyroola, (Plaintiffs,  
Appellants,

Musst. Hyatun, Luteefa, and Meer Wahid Ali, (Defendants,  
Respondents.

THIS suit was instituted on the 29th January 1848, for the reversal of an illegal attachment of property valued at rupees 23, annas 15, principal and expenses 2-6-3.

The facts of this suit are intimately connected with those of the preceding, No. 23, the property attached being the produce of the lands of the third share resigned by Musst. Hyatun, as fully detailed therein. The defendants, Hyatun and Luteefa, represented themselves to be in possession, and, therefore, attached the property for balance of rents.

The sudder ameen reversed the attachment considering it illegal, as the parties, being out of possession, could not adopt such measures to realize their rents. He, further, referred to his decision in the preceding case wherein all particulars of the claim were detailed.

The appellants now appeal to have that decree amended, by confirmation of their deed of kutkeenah.

Having in my decision, in No. 23, given my reasons in full relative to this deed, I need only refer to my judgment passed in that

suit this day, and declare the appeal dismissed for the reasons therein set forth. I, therefore, uphold the order of the lower court, and reject the appeal, with costs, without notice to the respondents.

THE 19TH FEBRUARY 1851.

No. 25 of 1849.

*Appeal from a decision of Syed Tufuzzool Hossein Khan, late Sudder Ameen of Behar, dated 13th July 1849.*

Fugmohun Singh, (Appellant,) Defendant, in the suit of Jeolol Singh and Surwun Singh, (Respondents,) Plaintiffs,

*versus*

Appellant, and Chukowree Sahoo, Kashee Sahoo, Phekoo Singh, and Dyal Singh, (Defendants.)

THIS suit was instituted on the 2nd February 1847, to have a farm lease of certain lands in mouzas Burkhu and Kitee Scroh, pergunnah Goh, granted on an advance of rupees 701, confirmed, and to be maintained in possession by right of purchase, also to set aside two acquittances (farkhuttees) alleged to have been given on payment of the said advance, and to recover the sum of rupees 52, the amount of profits from the farm. Suit valued at Company's rupees 799-11-8-16.

The plaintiffs claimed to hold the farm in question by right of purchase, on a deed of sale executed in their favor, on the 12th Bhadoon 1253 F. S. by Chukowree Sahoo, son of the original lessee, Khem Chund Sahoo, to whom the lease had been granted on an advance of Sicca rupees 701, under date 26th Bhadoon 1238 F. S., and declared the farkhuttees, dated 6th Bhadoon 1253, and 6th July 1843, or 1250 F. S., alleged to have been given by Chukowree and Kashee Sahoos, in favor of Phekoo Singh and Dyal Singh, to be gross forgeries prepared for the sole purpose of injuring their rights.

Phekoo Singh and Dyal Singh replied that the plaintiffs' deed of sale was an invalid document, having been executed by Chukowree Sahoo alone, whereas, if the sale was a *bonâ fide* transaction, the defendant Kashee Sahoo should have also signed the deed, he having inherited his father, Jetoo Sahoo's, half share in the farm, and, further, that they had repaid the amount advanced as shown by the acquittances cited, and received a deed of sale from the proprietor, Jugmohun Singh, under date 5th Chyte 1253 F. S. Jugmohun Singh supported the above statement.

Kashee Sahoo did the same, and declared the claim against him to be altogether wrong. Chukowree Sahoo denied having given

any acquittance to the first named defendants, and supported the plaintiffs' claim.

The sudder ameen considered the partnership of Kashee Sahoo, in the farm lease, unsupported by sufficient proof, and the farkhuttees to be fabrications, and, as the deed of sale in favor of the plaintiffs had been fully proved by the evidence of witnesses to be a correct document, the plaintiffs were entitled to retain possession of the farm till the amount advanced be liquidated by the proprietor and alleged purchasers, and, therefore, gave a decree to that effect against Jugmohun Singh, Phekoo Singh, and Dyal Singh, exempting the two Sahoos from all responsibility. Against this decision, Jugmohun Singh appeals, urging that the suit was undervalued, and, therefore, according to Construction No. 702, the plaintiffs should have been nonsuited; and, further, that, on a correct valuation of the suit, the sudder ameen could not take cognizance of the claim; that the partnership of Kashee Sahoo with Chukowree Sahoo, and granting of the acquittances by both parties were fully proved; and, therefore, their exemption from responsibility was incorrect; that the sudder ameen, when moonsiff of Jehanabad, had declared the documents now produced in support of the claim, and which had been filed in a case relative to this same lease, invalid, and, therefore, his decision, grounded on the validity of the same deeds now, was unjust; and, generally, that due consideration had not been given to the matter; the surplus of profits from the farm, after payment of interest, not having been credited in liquidation of the principal of the sum advanced.

In the court of first instance, the appellant raised no objections as to the valuation of the suit, which, under the Construction cited by him, he was bound to do; as it was optional for the plaintiffs to lay their suit at any amount they considered sufficient to cover their interests and the appellant did not dispute the point. It was not necessary for the lower court to make any summary inquiry on the subject. His present objection to the valuation is, therefore, worthless. On perusal of the decision passed by the sudder ameen, when moonsiff of Jehanabad, I do not find that the appellant's assertion, relative to the rejection of the plaintiffs' deeds as invalid, is borne out, and, therefore, this plea is unworthy of consideration. With respect to the proof adduced in support of the partnership of the Sahoos, and the granting of the farkhuttees, I quite agree in the opinion expressed by the sudder ameen, and, after full consideration of the circumstances of the case, have no hesitation in confirming that officer's order. The appeal is therefore dismissed, with costs, without notice to the respondents.

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THE 19TH FEBRUARY 1851.

No. 26 of 1849.

*Appeal from a decision of Syed Tufazzool Hossein Khan, late Sudder Ameen of Behar, dated 13th July 1849.*

Dyal Singh and Phekoo Singh, (Plaintiffs,) Appellants,

*versus*

Jugmohun Singh, Jeolol Singh, Sheolol, and Telukdharry Singh,  
(Defendants,) Respondents.

THIS suit was instituted on the 29th May 1848, in the moonsiff's court of Jehanabad, but was removed to that of the sudder ameen, under an order dated 28th June 1848, in consequence of the preceding suit No. 25, being pending between the same parties; claim being for possession of certain lands in mouza Burkha, pergunnah Goh, by right of purchase, on a deed of sale, dated 5th Chyete 1253 F. S., and registration as proprietors: also to recover rupees 10-15-6, profits appropriated during the Bhudae harvest of 1254 F. S. Suit valued at rupees 44-15-18-6.

The plaintiffs state that they purchased the property for rupees 901, from Jugmohun Singh and obtained possession; but, on the crops being gathered and their deputing agents to receive their share as proprietors, the defendants interposed and forcibly removed the grain; they then petitioned the criminal authorities, but were referred to the civil court. Their suit having been dismissed for default, they renew it.

Jeolol Singh replies to the same effect as noted in his plaint in the preceding suit No. 25, and pleads that, until the plaintiffs have discharged the sum advanced, their claim is incorrect.

Telukdharry Singh and Sheolol support the above statement and urge that, as all the collections of rents are made by Jeolol Singh, the claim against them is unjust. The sudder ameen remarks that as Jeolol Singh and the other defendants have offered no objections to the claim, save on the grounds of non-payment of the sum advanced, and Jugmohun Singh in the preceding suit No. 25, admitted the correctness of the sale of the property, respecting which all particulars had been fully detailed in the decree passed in that suit, he considered the plaintiffs entitled to receive the rents of the lands from Jeolol Singh, until such time they should repay the sum advanced, and, then, to recover possession of the property.

Against this decision, the plaintiffs appeal, stating that, as the sudder ameen grounds his judgment on the reasons recorded in his decree in suit No. 25, the pleas advanced by Jugmohun Singh, appellant in that suit, suffice also in the present case.

Having this day recorded my opinion of the validity of the claim of Jeolol Singh to the farm lease of the property noted in suit No. 25, of which the lands claimed in this case form a part, I con-

sider the order passed by the lower court, rejecting the claim for possession of the property, until the sum advanced be liquidated, just and proper, and, therefore, uphold it, and dismiss the appeal, with costs, without notice to the respondents.

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THE 22ND FEBRUARY 1851.

No. 146 of 1849.

*Appeal from a decision of Syed Mahomed Ali Ashruff, Moonsiff of Behar, dated 20th June 1849.*

Jhuggur Sahoo, (Defendant,) Appellant,

*versus*

Sujayet Ali, (Plaintiff,) Respondent.

THIS suit was instituted on the 9th June 1848, to recover rupees 113-10-9, price of grain.

The plaintiff represented that, having occasion for some ready-money, he sent to the defendant, who was his theekadar or farmer, and offered to sell him grain to the value of 100 rupees, to which the defendant agreed; that the grain was accordingly weighed out on the 21st Chyete 1255 F. S., and delivered, being in quantity 372 maunds and 18 seers of paddy; that defendant re-sold the same, and offered to pay the plaintiff 35 rupees, which was refused; but, up to date, has neglected to meet the demand, though frequently required to do so, and, in order to evade payment, brought an action against the plaintiff for forcibly taking away some documents. The case, however, was dismissed, on the 18th May 1848.

The defendant admitted that he was farmer of one of the villages, of which the grain in question was said to be a portion, but denied the purchase, urging that the plaintiff did not cultivate land capable of yielding so much grain as represented; that it was customary to employ the weighmen of the villages to weigh out grain, but which had not been done, nor any mention made by the plaintiff of the regularly appointed parties being so engaged on the occasion in question, and that the plaintiff could produce no documentary proof of his having received the grain. The facts were that defendant had some accounts to settle with the plaintiff, and, on his going to arrange matters, several documents, which he took with him, were forcibly taken possession of by the plaintiff, for which he complained in the fujldaree court. The case, however, was dismissed, and he was referred to the civil court.

The moonsiff considered the claim established by the evidence of witnesses; that those of the defendants merely testified to the non-receipt of the grain, but mentioned nothing about the forcible



taking of documents ; and, as the defendant's claim on that point had been dismissed in another suit, (No. 147) a decree was passed in favor of the plaintiff.

The defendant urges, in appeal, the arguments already noted in his answer, and that his witnesses fully established the non-receipt of the grain.

The evidence of witnesses alone in such a case, I do not consider sufficient to prove the claim. It is customary, in such transactions, to employ the regularly appointed village weighmen, which does not appear to have been done on this occasion, and to have some written memoranda made, but this also appears to have been altogether omitted. Notwithstanding the issue of the usual notice, the respondent has also failed to file any answer. I therefore decree the appeal, and reverse the order of the lower court, with costs chargeable to the respondent.

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THE 22ND FEBRUARY 1851.

No. 147 of 1849.

*Appeal from a decision of Syed Mahomed Ali Ashruff, Moonsiff of Behar, dated 20th June 1849.*

Jhuggur Sahoo, (Plaintiff,) Appellant,

*versus*

Sheikh Wahid Ali and Shujayet Ali, (Defendants,) Respondents.

THIS suit was instituted on the 14th December 1848, to recover rupees 94-14-10-4, principal and interest of a bond, dated 16th Kartick 1250 F. S., executed by Sheik Wahid Ali for 51 Sicca rupees, or to cause the return of the said deed, together with other documents forcibly taken from the plaintiff by Sheikh Shujayet Ali. Suit valued at rupees 159-11-6.

The plaintiff states that he has an interest in a farm held by his nephew, Mehur Chund Sahoo and Sheikh Torab Ali, from Sheikh Mahomed Hosein and others, sons of Wahid Ali, and, on being requested by Shujayet Ali to go to his house for the purpose of settling accounts, he repaired thither, on the 26th Chyete 1255 F. S., taking with him the bond in question, certain receipts for rent amounting to rupees 39-13-6, a maufeenamah for rupees 25, dated 11th Bysakh 1254, and four dakhillas granted by the revenue authorities ; that a dispute arose between the parties when Shujayet Ali took away all the documents ; that he complained in the foudj-daree court, but was referred to the civil court.

The defendants deny the claim, and urge that by omitting to sue for the recovery of the revenue office dakhilla, the value of which he represented in the foudj-daree court to be rupees 155-2-5, and in this suit has refrained from mentioning, the plaintiff should be nonsuited ; that he complained against several other parties in the criminal court besides the defendants, and, therefore, is liable to the

same penalty; that, until he sues all shareholders in the estate, the validity of the maufeenamah, or the fact of its execution, cannot be proved; that the suit comprising two distinct claims is irregular, and having described the bond as dated 1255 F. S., and maufeenamah of 1247 F. S., in the foudjaree court, the dates now specified show those documents to be incorrect.

The moonsiff gave full credence to all the pleas raised by the defendants, and, considering the evidence of the witnesses insufficient to prove the execution of the bond, or the fact of its having been forcibly taken from the plaintiff, dismissed the claim.

In appeal, it is urged that as the name of Shujayet Ali alone was recorded in the magistrate's proceeding, it was unnecessary for him to sue others; that the dates of the deeds cited in his plaint corresponded with those mentioned in his petition to the criminal court, and must have been altered to suit the defendant's purposes; that the moonsiff should have required the original record before dismissing his claim, which was fully proved by witnesses.

Notwithstanding the issue of the usual notice, the respondents have not appeared to defend the suit. I do not consider the claim barred for the reasons pleaded by the defendants, and, therefore, reject them. The execution of the bond, is, in my opinion, clearly established both by the evidence of the witnesses examined before the criminal court and the moonsiff, and, therefore, no just grounds for its rejection by the lower court existed. The moonsiff, moreover, before deciding the suit, should have called for the original record, when he would have clearly observed that the date of the bond had been altered in the foudjaree petition from 1250 to 1255 F. S., and the year 1247 of the maufeenamah to have been subsequently inserted. The plaintiff's witnesses also clearly establish the fact of Sheikh Shujayet Ali having taken the deeds from the plaintiff by force. I, therefore, decree the appeal, and reverse the order of the lower court, with all costs chargeable to the respondents.

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THE 25TH FEBRUARY 1851.

No. 144 of 1849.

*Appeal from a decision of Moulvee Mahomed Furreedooddeen, Moonsiff of Jehanabad, dated 23rd June 1849.*

Nemnarain Singh and Madho Singh, Appellants, (Defendants,) in  
the suit of Thakoor Singh, Respondent, (Plaintiff,)

*versus*

Appellants, and Kurrun Singh, Defendant.

THIS suit was instituted on the 5th January 1849, to recover rupees 28, price of 7 mangoe trees.

The plaintiff states that, at an auction sale, held on the 23rd January 1837, in execution of a decree of one Musst. Doolaree, he purchased a garden containing 32 mangoe trees, belonging to Kookur Singh and Goonjur Singh, for 10 rupees, and obtained possession; that as his residence is distant from the property about two miles, he could not daily visit the spot, and, during his absence, the defendants, who are shareholders of the village Ankoonee, pergunnah Ichha, cut down and carried away the 7 trees in question, on the 28th Aughun 1256 F. S.

Nemnarain Singh and Madho Singh deny the title of the plaintiff, and declare the property to have been purchased by their relative Jeolol Singh (benamee) in the name of plaintiff, who executed a deed relinquishing all title to the same, under date 21st Aughun 1245 F. S.; that Jeolol Singh died in 1251 F. S., and defendants are in possession of the property; that, up to 1255, they cut down 20 trees as they required them, and also removed 8 more in 1256, leaving 4 still standing in the garden: they, further, urged that the plaintiff never having had possession, his claim is now barred by the limitation laws reckoning from the date of sale; at the same time, however, they offered to give up possession and pay for the trees if the plaintiff would swear to the truth of his claim, and that the purchase was made by him and for himself.

Kurrun Singh represents his having no concern with or interest in the property, which belongs to the plaintiff, who allowed him to cut and remove two trees for his own use.

The plaintiff denied having executed any such deed as pleaded by the defendants, and challenged them to produce it, and agreed to abide by their oath on the point. The moonsiff decreed the case in favor of the plaintiff, on the grounds that the two first named defendants admitted having cut and removed the trees; that the purchase of the garden was proved to have been made by the plaintiff and for himself only, and Kurrun Singh had acknowledged the plaintiff's rights; therefore, the pleas raised relative to the execution of the deed cited by the defendants were worthless, and as they had agreed to abide by the plaintiff's oath as to the correctness of his claim, their objections were undeserving of consideration. Kurrun Singh was exempted from liability.

In appeal, it is urged that the plaintiff having omitted to include in his claim the value of all the trees in the garden, by which the suit was undervalued, should have been nonsuited; that the plaintiff produced no deed to establish the fact of his purchase of the property; that the valuation of the trees in question was excessive; that the plaintiff preferred no claim to the garden at the time of settlement of the village; that having once declined to make a statement on oath as to the truth of his claim, his doing so under the circumstances noticed in the record was insufficient, and that the appellants' rights were fully supported by the deed of 21st Aughun

1245, and the evidence of the subscribing witnesses thereto: they also objected to the exemption of Kurrun Singh, from liability. The respondent replies that the action was laid according to the value of the trees cut, and, therefore, the suit was not undervalued; that the purchase was not benamsee; that his claim is proved by the evidence of his witnesses, the answer of Kurrun Singh, and the admission of the appellants themselves relative to his being the actual purchaser, and their felling the trees; that the deed cited was a fabrication, and, as appellants had agreed to abide by his statement on oath, their objections are undeserving of consideration.

Though the plaintiff omitted to produce the original bill of sale, the fact of his having been the actual purchaser at the time is sufficiently proved both by the admissions of the defendants and the evidence of witnesses. It only remains to be seen whether the deed cited by the appellants is a correct document or not: its execution by the plaintiff is distinctly sworn to by the subscribing witnesses, but on their testimony I place but little reliance. The paper bears date 21st Aughun 1245 F. S., whilst the signature attached to it is that of Thakoor Singh. Had this deed been actually executed as pleaded, it is most improbable that the appellants would have allowed so long a period as eleven years and more to elapse without demanding the fulfilment of the principal condition contained in it, namely, the delivery of the original bill of sale. Moreover, the signature affixed to this paper, and that given on the plaintiff's deposition before the moonsiff, will bear no comparison, and, as none of the witnesses are residents of the plaintiff's village, I do not credit their version of the transaction; and Kurrun Singh, a shareholder in the appellants' village, fully supports the plaintiff's claim. I have no hesitation in pronouncing this deed invalid and useless. The appellants have produced no proof to establish the point of the garden being settled with them, or of the plaintiff's having preferred no claim at the time of the settlement; their pleas relative to the undervaluation of the suit, and excessive valuation of the trees in question, are altogether incorrect; as it was unnecessary for the plaintiff to sue for more than the value of the damage done, and he was at liberty to fix whatever price he thought the trees worth according to age, growth and produce; and I see no reason to question the correctness of his valuation of 4 rupees per tree. I therefore reject their objections. Further, as the claim was for damage done, and the appellants have failed to prove the plaintiff's dispossession for upwards of twelve years, their plea of the claim being barred by the limitation laws, is absurd; and as they agreed to abide by the plaintiff's statement on oath, which has been duly recorded, I consider the order of the moonsiff correct and proper, and therefore uphold it, and dismiss the appeal, with costs.

THE 25TH FEBRUARY 1851.

No. 149 of 1849.

*Appeal from a decision of Sheikh Kasim Ali, former additional Moonsiff of Gyah, dated 27th June 1849.*

Jungee Singh, Appellant, (Defendant,) in the suit of Gopal Singh and Ramsuhai Singh, Respondents, (Plaintiffs,)

*versus*

Appellant, and his son Ramjewun Singh, (Defendants.)  
Ujaib Singh, Objector.

THIS suit was instituted on the 9th September 1848, for possession of 1 anna, 3 dams, and a little more, portion of mouza Dehoree, aslee mi dakhilee, pergunnah Kabur, and registration of plaintiffs as proprietors; also to set aside an order of the deputy collector, dated January 11, 1845, and to recover rupees 4-8, being rents appropriated from 1253 to 1255. Value of suit rupees 63-2.

The plaint is that the lands in question, being the property of Birjoo Singh, were pledged as security for the fulfilment of an abkaree farm agreement, entered into by the defendant Jaugee Singh; that on balances accruing, the property was sold and bought by Gopal Singh, who again resold half to the other plaintiff on the 28th Assar 1st 1243 F. S.; that the village was afterwards sold for arrears of revenue and purchased by Government; and, on plaintiff's applying for the settlement, their prayer was rejected, and no notice taken of their deeds of sale; that, having purchased the rights and interests of the former proprietor, they are entitled to the settlement, and, being referred to the civil court to establish their claims, they now sue for the reversal of the deputy collector's order above noted, by which the settlement was concluded with Jaugee Singh on the sole grounds of occupancy prior to their purchase.

Jaugee Singh replied that calculating from the 10th June 1836, the date of the first sale to Gopal Singh, and 28th Assar 1st 1243 F. S., that of the second sale to the other plaintiff, the claim was barred by the limitation laws; that, if the plaintiffs had possession prior to the date of purchase by the Government, they should be able to produce dakhillas; the facts are that the plaintiff's never had possession; that, through fear of his creditors, defendant had the property purchased in Gopal Singh's name, and, on its being sold for arrears of revenue, appealed. Had the plaintiff's had any title, they would have petitioned on the subject; they, however, refrained from doing so, and as the estate was held under attachment for some years on account of demands against defendant, of which Gopal Singh has omitted to make any mention, the deed of sale cited by the second plaintiff is invalid, and the claim altogether incorrect.

The other defendant filed no answer.

The plaintiffs replied that the 12 years must be reckoned from the date of the settlement proceeding, and, therefore, their claim is not barred; that, if the purchase had been made as pleaded by the defendant, he would have the original bill of sale, but such was not the case.

Ujaib Singh states that the settlement having been concluded with other shareholders besides the defendant, the plaintiff should have sued all parties, not having done so, his plaint is defective. He further supports the defendant's statement.

The moonsiff decreed the case in favor of the plaintiffs, on the grounds that the record showed Gopal Singh to have been the real purchaser of the property, and to have received the deed of sale drawn up in his own name from the revenue authorities; and, as no proof of the purchase being fictitious had been adduced, the plaintiffs' title to the property must be upheld; that the deputy collector's proceeding merely stated the lands to have been in the occupancy of the defendant; but, as such occupancy alone conveyed no right or title to settlement, the proceeding quoted must be reversed.

In appeal, it is urged that the plaintiffs' claim is defective, inasmuch, as the defendant's name is registered with those of several other shareholders of the land in question, and as he has only a share of 4 dams and  $2\frac{1}{2}$  cowries, about, the claim against him alone was untenable. Moreover, that the Government should have been made a party to the suit.

The respondents reply, repeating the arguments advanced in their pleadings before the lower court.

On perusal of the proceeding held by the deputy collector, relative to the settlement of this property, it appears that the defendant's claim, grounded on the fictitious purchase pleaded, was rejected, and that the settlement was concluded with him solely on the grounds of his having been occupant of the lands prior to the sale for Government revenue held on the 18th November 1837. I agree with the moonsiff that the defendant has failed to prove his purchase of the property, and as the sale appears from perusal of a proceeding filed by the respondents, held by the superintendent of settlements dated 12th September 1844, to have been reversed and annulled, the plaintiff Gopal Singh, who clearly purchased the estate in the first instance, under date 10th June 1836, has every right to be restored to the position he occupied prior to the second sale and attachment of the lands. The pleas advanced, relative to the defect of parties to the suit, and the claim being barred by the limitation laws, I consider incorrect. By the bill of sale filed by Gopal Singh, it is clear that he had possession prior to the sale of 18th November 1837, and, therefore, the prescribed term must be calculated from that date. The suit was, therefore, instituted within the term allowed by law, and as the plaintiffs sued to set aside an order which clearly

showed the defendant Jangee Singh to be the only party concerned in the settlement, it was unnecessary for them to sue either the Government or other shareholders in the estate. I, therefore, dismiss the appeal, with costs, and confirm the order of the lower court.

THE 25TH FEBRUARY 1851.

No. 150 of 1849.

*Appeal from a decision of Sheikh Kasim Ali, former additional Moonsiff of Gyah, dated 27th June 1849.*

Jungee Singh, Appellant, (Defendant,) in the suit of Gopal Singh and Ramsuhai Singh, Respondents, (Plaintiffs,)

*versus*

Appellant, and his son Ramjewun Singh, (Defendants.)

THIS suit was instituted on the 9th September 1848 for possession of 1 anna, 3 dams, and a little more, portion of a 3 annas and 10 dams share of mouza Burhaus, known by the name of Kurrah, pergunnah Kabur, and registration of plaintiffs as proprietors; also to set aside an order of the deputy collector, dated 11th January 1845, and to recover rupees 12, being rents appropriated from 1253 to 1255 F. S. Suit valued at rupees 61-8.

As all the pleadings and decision in the suit are similar to those noticed in the preceding case No. 149 of 1849, between the same parties, it is needless to repeat them; and as the reasons recorded in my decision of that suit this day passed, apply equal to this case, it is sufficient to declare this appeal also dismissed on the same grounds. I therefore confirm the order of the lower court, and dismiss the appeal, with costs.

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THE 27TH FEBRUARY 1851.

No. 17 of 1849.

*Appeal from a decision of Moulvee Syed Mahomed Ibrahim Ali Khan Bahadoor, late Principal Sudder Ameen of Behar, dated 21st April 1849.*

Joorawur Singh and Musst. Ramkullee, Appellants, (Defendants,) in the suit of Musst. Jeetnoo, wife of Jeetnoo Loll, deceased, and Musst. Buldeh, wife of Hurkoonath, son of the said deceased, as maliks, and Kherodhur Gerai, purchaser of a two annas share of mouza Gobindpore, Plaintiffs, (Respondents,)

*versus*

Appellants and Hurreedoss, (Defendants.)

THIS suit was instituted on the 1st February 1848, for possession of a four annas portion of mouza Gobindpore, aslee mi dakhilee,

pergunnah Okhurree, by cancelment of an izaranamah, dated 24th Rubbee-ool-sanee 1258 Hijree; also for the reversal of an order passed by the criminal authorities under Act IV. of 1840, dated 4th September 1847, and annulment of a deed of sale and pottah alleged to have been executed by Musst. Ramkullee in favor of Joorawun Singh, under date 5th Chyete 1254 F. S., and to recover rupees 134-8, principal and interest of revenue from 1251 to the Poos kist 1255 F. S., and cause the registration of the plaintiffs as proprietors. Suit valued altogether at rupees 2182-8.

The plaint sets forth that, of the village in question, the ancestor of Jeetoo Loll originally possessed a share somewhat exceeding 1 anna and 6 dams, to which on the demise of Soondur Loll a further share of 13 dams and over was added, thus making a total of 2 annas; that Soondur Loll conveyed to Jeetoo Loll himself by deed of hiba-bil-ewaz, dated 25th December 1814, a further 2 annas portion of his property; so that at the time of their father's decease, Jeetoo Loll and his brother, Boniadee Loll, possessed 4 annas of the village; this they gave in farm to Hurreedoss for five years from 1250 to 1254 F. S., according to the izaranamah of 1258 Hijree, above cited, on an advance of rupees 1600; but as he has not paid a fraction of the rents from 1251 to 1254, the present action is brought for their recovery, and the cancelment of that deed. On the 23rd January 1846, Jeetoo Loll having succeeded to the share of his brother, who died in Bhadoon 1252 F. S., sold 2 annas to Kherodhur Gerai for rupees 2500, and let the remaining 2 annas in farm to Tegchund Gerai on an advance of rupees 300 at an annual rental exclusive of the Government revenue of Sicca rupees 56, and offered to repay Hurreedoss the amount advanced by him. The offer, however, was refused, and Jeetoo Loll then petitioned the court on the subject on the 1st July 1847, and proceeded to attach the property under Construction No. 1333, and put the purchaser and farmer in possession. In consequence, however, of Hurreedoss and Joorawun Singh offering opposition, he was compelled to bring the matter to the notice of the magistrate. As the possession of Joorawun Singh was confirmed by the criminal court under Act IV. of 1840, he now sues for the reversal of that order, on the grounds that the lease of Hurreedoss having expired, neither he nor Joorawun Singh had any right to retain possession, their only claim being for the repayment of the sum advanced; that Boniadee Loll having died without male heirs, besides himself, the property became his by right of inheritance, and therefore Musst. Ramkullee, the deceased's daughter, had no power to dispose of any portion of her father's estate, either by sale or farm to Joorawun Singh, and that the magistrate had no authority to try the question pleaded by the defendants in his court, as to whether the plaintiff was or was not the adopted son of Soondur Loll. Joorawun Singh replied that Jeetoo Loll and Boniadee Loll were sons of Bechoo Loll, and that the former, having been



adopted by Soondur Loll, was excluded from inheriting any portion of his father's estate; and represented the facts to be as follows: that both Bechoo and Soondur had a 2 annas share in the village in question, which the former on his own part, and the plaintiff on the part of the latter, farmed to Musst. Wuheedun by one deed from 1334 to 1244 F. S.; but before the lease had expired, they, on the 21st Sawun 1839 F. S., gave the property in farm to defendant on an advance of rupees 500; all demands of the former lessee being discharged, the original deed returned, and the term of lease fixed from 1240 to 1246 F. S.; that, on Bechoo Loll's demise, Boniadee Loll inherited his property, and, on accounts being adjusted, a balance of rupees 1600 (exclusive of the above advance) on account of rents and bond was shown to be due by the plaintiff and Boniadee Loll jointly, and, considering this debt as an advance, they gave a fresh lease to the defendant up to 1254 F. S., the pottah being drawn up in the name of Hurreedoss who, however, had no interest in the matter, the defendant retaining possession till Bhadoon 1254. In Bhadoon 1252, however, Boniadee died, owing him rupees 1500, and his daughter, Ramkullee, being unable to pay the amount, sold him  $1\frac{1}{2}$  as of her father's 2 annas in lieu of the debt, a deed of sale being duly executed, under date 5th Chyte 1254, according to which he is in possession, and, therefore, that plaintiff has no claim against the said share; that the fact of plaintiff being the adopted son of Soondur Loll, is duly set forth in the izaranamah; and, as by the Hindoo law, in the event of no male heirs existing, the property of the father descends to the daughter, Ramkullee's right to inherit is clear, and, as she sold the property to liquidate her father's debts and other expenses, the sale of the property by her is valid.

Musst. Ramkullee supported the above statement.

Hurreedoss filed no answer.

The principal sudder ameen considered the proof adduced in support of the statement of the plaintiff's being the adopted son of Soondur Loll, insufficient; that the deeds had been altered, and, therefore, could not be credited; that as Boniadee Loll had no son, and it was not proved that the plaintiff lived separate from his brother, he was, therefore, entitled to succeed to the property; that as he inherited the 2 annas share of Soondur Loll as hibah-bil-ewuzdar, as shown by documents filed, he was not thereby debarred from succeeding to ancestral property, and, therefore, a decree was passed in his favor.

In appeal, it is urged that the principal sudder ameen should have referred to the registry office records, to ascertain if the deeds had been altered or not, before deciding the case; that, in executing the documents, it was natural for the plaintiff to style and describe himself as the son of Bechoo, and adopted son of Soondur Loll, and as the deeds and witnesses clearly establish the adoption, the decision was wrong and opposed to the Hindoo law.

In the original deed of 21st Sawun 1239 F. S., the word adopted **متنبي** has evidently been written over some other erased words, and which appear to have rated with the term share, **حصه**, traces of it being still perceptible. It is urged that, as the writing in the registry books is correct and bears no marks of erasure, the original deed must have been in its present state when registered on the 15th August 1832, and, as Jeetoo Loll himself attended on that occasion, no exception should now be taken to it. The writing in the registry books is certainly correct enough, but I do not see that that fact alone can make a deed in a mutilated state, valid. In the original deed by Soondur Loll, bequeathing the 2 annas, the plaintiff is described as the son of Bechoo Loll and hibah-bil-ewuzdar hissa Soondur Loll, and the same terms are used in the deed leasing the shares of both Bechoo and the plaintiff to Wuheedun from 1234 to 1244 F. S., without the slightest mention being made of his having succeeded to the property, as the adopted son of the giver. It is therefore impossible to suppose the plaintiff would have executed a deed in 1239, and knowingly submitted to the insertion of such a term as *adopted*, so opposed to the whole tenor of the deed, by virtue of which he acquired the property, and which would deprive him of his rights to inherit other family property; that the document was registered there is no doubt, but I question if the erasure and alteration now so perceptible were then extant. The copy of the deed filed for record, is clear and legible, and without alterations, and, as it is, must be concluded that, if the erasure existed at the time of registry, some notice would have been taken of the matter. I am decidedly of opinion, that a gross fraud was practised at the time of registry; the contents of the copy of the deed being transcribed in the book, without due comparison with the original; at any rate, the deed has been altered without the knowledge of the plaintiff, the principal party concerned, and, therefore, I can place no faith in it. Jeetoo Loll is said to have been present at the time of the registry, but this is doubtful. If so, the alteration was not made before registry, or he would have discovered it. If not, it was no difficult matter to get some one to personate him, and thus enable the opposite party to attain their object. I, therefore, altogether reject the plea raised as to the validity of this document in proof of the plaintiffs being the adopted son of Soondur Loll. In the body of the deed of 1249 F. S., no mention whatever is made of his being so adopted; yet at the foot of the document is appended a detail of the property farmed, of which 2 annas are declared to belong to the plaintiff so described. I fully agree with the principal sudder ameen in considering this a subsequent addition, and, therefore, reject it as insufficient to establish the fact of adoption; and as all the deeds cited by the defendants, appellants, prove the lands to have been leased by the plaintiff in conjunction with his father and brother subsequently, and, therefore,

that the family was undivided, and the Hindoo law declares the daughter entitled to inherit her paternal property, only in the event of division or discussion of the family. It is clear the plaintiff was entitled to succeed to his deceased brother's share, and, therefore, that Ramkullee had no power to dispose of any portion of her father's estate, even for the purposes pleaded, of which no proof has been adduced of a satisfactory nature. I, therefore, concur in the opinion expressed by the principal sudder ameen, and confirm his order, and dismiss the appeal, with costs, without notice to the respondent.

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THE 27TH FEBRUARY 1851.

NO. 25 OF 1849.

*Appeal from a decision of Moulvee Syed Mahomed Ibrahim Ali Khan Bahadoor, former Principal Sudder Ameen of Behar, dated 9th May, 1849.*

Baboo Juddoo Singh, and Musst. Sumode Koowur, wife of Himut Singh, deceased, (Defendants,) Appellants,

*versus*

Musst. Bechun, Afzoolnissa, and Altaf Hossein, Musst. Wuleeoonissa, Amutoolsohra, heirs of Nawab Wajid Ali Khan, deceased, and Abdool Hossein Khan, Zynoolaboodeen, Akbul Hossein Khan, sons, and Musst. Hyatoon, wife, heirs of Zukhee Hossein Khan, deceased, brother of Musst. Fatima, and Abdool Hossein, before mentioned, guardian of Abid Hossein, minor, adopted son of Musst. Fatima, aforesaid, and Musst. Fuzzcelutoonissa, wife of Mehndee Hossein Khan, and Mussts. Bukshee, Asloo, and Imamee, daughters of Musst. Ushrutoonissa, (Plaintiffs,) Respondents.

THIS suit was instituted on the 7th April 1847, to recover rupees 2120-10-11, principal and interest on account of rents due on a perpetual lease of mouzas Tajpoor, Mujjowa, Inayet Chuk, Khyrab, Himutpoor, and Khubbra, pergunnah Muhere, from 1251 to 1253 F. S.

The appellants having this day appeared, the former in person, and the latter by mookhtear, and filed a kistbundee for the due discharge of the respondent's claim, *minus* interest and costs of suit, and the respondents having agreed to the arrangement, the order of the lower court is, therefore, upheld, and the appeal dismissed, with costs.

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THE 27TH FEBRUARY 1851.

No. 193 OF 1849.

*Appeal from a decision of Moulvee Syed Humeedooddeen Ahmud, Moonsiff of Aurungabad, dated 10th November 1849.*

Baboos Hurnath Singh, Telukdarree Singh, Saheb Singh, and Ajoodhea Singh, (Plaintiffs,) Appellants,

*versus*

Chooneeram Nonear, (Defendant,) Respondent.

THIS suit was instituted on the 10th August 1848, to recover rupees 258-5-9, principal and interest of a bond, dated 11th Aughun 1253 F. S., which, it is alleged, the defendant promised to redeem in Chyte 1254, but has failed to do.

The defendant denied the debt and bond, and pleaded that on the date of its alleged execution, he was in the Hooghly district carrying on his trade of cloth-seller, and that the plaintiffs, having a spite against him, have fabricated the deed.

The moonsiff considering the evidence adduced to establish the transaction insufficient, and that, on the date of the bond, the defendant was clearly proved to have been from home as pleaded, dismissed the case.

In appeal, it is urged that the subscribing witnesses of the bond fully establish the claim, and that the evidence of the defendant's witnesses, as to his absence from home, is not worthy of credit, considering that a period of three years had elapsed between the date of the bond and that on which they gave their depositions.

The appellants in questioning the correctness of the testimony of the defendant's witnesses, appear to have overlooked the fact that the same argument applies to the evidence of their witnesses, which is decidedly unsatisfactory, and of a contradictory nature, and, therefore, insufficient to establish the claim; and, as I fully concur in the opinion expressed by the moonsiff as to the defendant's absence from home, I confirm his order, and dismiss the appeal, with costs, without notice to the respondent.

THE 28TH FEBRUARY 1851.

No. 131 OF 1848.

*Review of Judgment passed by Mr. Charles Steer, late Officiating Additional Judge of Behar, in the suit of*

Chotoo Jossee, Appellant, (Defendant,) in the case of Kumlaput Tewarree, (Plaintiff,) Respondent,

*versus*

Appellant, and Gunga Gobind, (Defendants.)

ON the 31st January 1850, the appellant's claim to exemption from costs was recognized by the presiding judge, and an order

passed for their being made chargeable to Gunga Gobind defendant. Permission having been granted by the Sudder Court for a review of this judgment on the petition of Gunga Gobind, in which he pleads his not having been made a respondent, or called upon to show cause in the appeal in question, and, therefore, could not be charged with his co-defendant's costs, which should be borne by the plaintiff, in consequence of the appellant's exemption from liability for the claim in the original action, I have this day taken up the case. As Gunga Gobind, in his answer before the lower court, acknowledged Chotoo Jossee, to be his servant, and was declared liable for the amount claimed, and, consequently, for the acts of his servant, and the plaintiff could not do otherwise than sue both parties, I consider the order passed by Mr. Steer, in this matter, declaring the petitioner liable for the costs of his co-defendant, correct and proper, and, therefore, see no reason for interfering with it. The appeal is, therefore, dismissed, and the petitioner charged with costs of Chotoo Jossee in the former appeal, as well as the attendant costs of the present one.

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THE 28TH FEBRUARY 1851.

No. 132 of 1848.

*Review of Judgment passed by Mr. Charles Steer, late Officiating Additional Judge of Behar, in the suit of*

Chotoo Jossee, Appellant, (Defendant,) in the case of Kumlaput  
Tewarree, (Plaintiff,) Respondent,  
*versus*

Appellant, and Gunga Gobind, (Defendant.)

THE particulars of this matter are precisely similar to those noticed in the preceding No. 131, and, therefore, need not be repeated. The appeal of the petitioner Gunga Gobind is, therefore, for the reasons recorded in that judgment, dismissed, and the costs of Chotoo Jossee in the former appeal, as well as those attendant on the present one, charged to him.

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THE 28TH FEBRUARY 1851.

No. 186 of 1849.

*Appeal from a decision of Moulvee Syed Mahomed Ali Ashruff, Moonsiff of Behar, dated 12th September 1849.*

Mirza Tegh Ali, Mirza Golam Mehdee, Mirza Hatim Ali, and  
Musst. Nusseerun Khanum, (Plaintiffs,) Appellants,

*versus*

Nirput Singh and Kherun Singh, sons and heirs of Pokhraj  
Singh, deceased, (Defendants,) Respondents.

THIS suit was instituted on the 23rd January 1849, to recover rupees 161-12-9-5, principal of profits on a 2 annas, 13 dams,

6 cowrees, and a little over, share of a third share of the village Burrawah, pergunnah Sumoy, for 1249 and 1250 F. S., and rupees 122-3 annas, interest, total rupees 283-15-9-5, according to accounts signed by agents of both parties.

The plaintiffs state that they borrowed 498 rupees from the father of the defendants, and gave a bond for the amount bearing interest at 1 per cent. per mensem, on the 13th Aughun 1246 F. S., at the same time giving him a bhurnamah or assignment of the above portion village, the profits on which, after payment of the Government revenue and other necessary expenses, it was agreed, should be credited in liquidation of the principal and interest of the loan, and an account rendered annually; that they subsequently borrowed a further sum of rupees 50, and gave another bond dated 1st Jyte 1246 F. S., on the same conditions, that the defendant's father, accordingly, took possession of the property in 1246, and appropriated all the profits till 1250, but never rendered an account, and on their importuning him on the subject, relinquished possession in the month of Chyte. As defendants are his heirs and by accounts are indebted to the above extent, the suit is brought for the recovery of the amount noted.

The defendants plead that the plaintiffs should be nonsuited for undervaluation of the suit; that the deed of assignment referred only to the first bond; that their claims on the plaintiffs had not been discharged, and they had filed a separate suit against them for the recovery of the amount of the second bond.

The moonsiff considered the accounts produced by the plaintiffs, incorrect and opposed to the plaint, and, therefore, fabricated, and dismissed the suit.

In appeal, it is urged that the plaintiff's accounts were correct; that as it was clearly proved by the evidence of the putwarree of the village in a case under Act IV. of 1840; that the papers of the defendants had been lost, those now produced by them had been prepared for the occasion, but no notice was taken of the subject by the lower court: various other frivolous objections are taken as to the number of dakhillas, and the amount specified therein, and which, it is pleaded, the moonsiff has recorded erroneously in his decision.

On a careful consideration of all the accounts filed in the suit, I see no reason for interfering with the decision passed by the lower court. These accounts are certainly incorrect in many particulars, which the plaintiff's vakeel is unable to explain, and differ materially from those filed by the defendants, which I see no grounds to question. The dakhillas alone suffice to establish this point, the amount of Government revenue being most incorrectly stated in the plaintiff's papers, and, therefore, I have no doubt of the correctness of the order of the lower court as to their rejection. The appeal is, accordingly, dismissed, and the moonsiff's order confirmed, without notice to the respondents. All costs are chargeable to the appellants.

THE 28TH FEBRUARY 1851.

No. 187 of 1849.

*Appeal from a decision of Moulvee Syed Mahomed Ali Ashruff,  
Moonsiff of Behar, dated 12th September 1849.*

Mirza Tegh Ali and Mirza Golammehadee, (Defendants,) Appellants,

*versus*

Nirput Singh and Kherun Singh, (Plaintiffs,) Respondents.

THIS suit was instituted on the 23rd September 1848, to recover Company's rupees 106-10-8, being the principal and interest of a bond, dated 1st Jyete 1246 F. S.

The plaintiffs state that defendants borrowed from their father, Pokraj Singh, the sum of Sicca rupees 50, and executed the bond in question, interest at 1 per cent. per mensem, and re-payment of the loan in Bysakh 1247 being stipulated. As their father died in 1254 F. S., and they have succeeded to his estate, and defendants refuse to pay the debt, the suit is brought to enforce the same.

The defendants reply to the same effect as noted in their plaint in the foregoing case No. 186 of 1849.

The moonsiff decided that, as the defendants admitted the bond, and it was also proved by evidence of witnesses, and the terms of the deed were opposed to the assertions of the defendants, relative to certain property being assigned for its liquidation, the plaintiffs were entitled to recover the amount, and, therefore, gave a decree in their favor for the full claim.

In appeal, the arguments advanced in that of the preceding case are repeated.

Having in my decision of this day passed in the preceding suit, No. 186, dismissed the defendants' appeal on the grounds of the incorrectness of their accounts, referring to this bond debt also, and as they admit the bond, I dismiss this appeal also, with costs, and confirm the order of the lower court, without notice to the respondents.

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## ZILLAH EAST BURDWAN.

PRESENT: J. H. PATTON, Esq., JUDGE.

THE 10TH FEBRUARY 1851.

Case No. 133 of 1850.

*Appeal from a decision of Mr. J. S. Bell, Sudder Moonsiff of East Burdwan, dated 18th February 1850.*

Jibunkishen Dhur, (Plaintiff,) Appellant,

*versus*

Golukchunder Kund, (Defendant,) Respondent.

BALANCE of account. Action laid at rupees 145-12.

The plaintiff sues for the balance of an account adjusted before witnesses and ratified by the promise of settlement by the defendant, the litigant parties being engaged in trade, under a form of co-partnership, at the time of the alleged transaction.

The defendant denies the claim and the alleged adjustment of accounts and promise of payment of the balance struck. He admits the co-partnership on certain conditions, and its duration until 1251, when he says it was dissolved by mutual consent, each executing in favor of the other a deed of release of all demands on the joint account. He further avers that the terms of the dissolution were that the plaintiff should take over the stock in hand and satisfy all claims against the concern, and that he, himself, should be exempt alike from profit and loss in the winding up. He adds that each was debited and credited in the ledger in his own name for articles appropriated and sold, and stood towards the other in the relation of co-sharer with equal rights and responsibilities, and contends that he cannot be sued as a shop customer. He challenges the production of the books of the firm by the plaintiff, and offers proof in support of the release executed by him.

The plaintiff, in his rejoinder, expresses his readiness to sue for a general adjustment of the accounts of the concern as soon as the



defendant shall have explained the questionable entries in the ledger and other books, and maintains that the present claim is not on account of joint speculation, but private trade on the basis of a separate and distinct account, kept in the defendant's handwriting.

The moonsiff rules that the proofs adduced by the plaintiff do not establish the issue he pleads. For instance, the three witnesses cited by him, in support of the claim, being on a private account, do not maintain the fact, and there is no direct evidence of the appropriation of the monies by the defendant, on sale of the articles enumerated in the memorandum filed. The testimony, moreover, of these witnesses is discordant and disentitled, consequently, to belief. The moonsiff also argues that if there had been any balance due by the defendant to the plaintiff on the dissolution of co-partnership, the latter would infallibly have taken from the former a written engagement exhibiting the amount and admitting his liability for the same. He, moreover, contends that the claim is inadmissible; because the plaintiff makes it as based on a private account during co-partnership, which, he admits, ceased in 1251, while the memorandum offered in support of plea shows the entries to extend as far as Jyte 1252, long subsequent to the dissolution. Under the foregoing circumstances, the moonsiff decrees against the plaintiff, but, in doing so, abstains from recording any decision regarding the release filed by the defendant and proved by his witnesses, lest it might prejudice the action, contemplated by the plaintiff, for adjustment of the general accounts of the joint stock concern.

The plaintiff takes exception generally to the views adopted by the moonsiff in his judgment, and conceives himself wronged by his omitting to dispose of the release alleged to have been executed by him, which he maintains is a forgery, and would have been thus proved had an inquiry been made into its authenticity.

The appellant's claim rests on an alleged adjustment of a private account kept during co-partnership, but distinct from the receipts and disbursements of the common concern. He has failed to prove his plea because the evidence adduced in support of it, both oral and documentary, do not warrant the assumption; so far from it, its tendency is hostile and in favor of a diametrically opposite state of things. I think the moonsiff's judgment sound in the disposal of the claim, and considerate in withholding the expression of opinion in regard to the validity or otherwise of the release, a document so important to the action anticipated by the appellant. I affirm his award.

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THE 11TH FEBRUARY 1851.

Case No. 135 of 1850.

*Appeal from a decision of Cazi Nazeerooddeen, Moonsiff of Indos, dated  
4th March 1850.*

Ramuni Dasi, (Defendant,) Appellant,

*versus*

Sreemunt Sirkar and others, (Plaintiffs,) Respondents.

ANNULMENT of summary award, under Regulation V. of 1812.  
Action laid at rupees 26-14-3.

It is quite unnecessary to detail the particulars of this case, as it must be remanded for re-investigation for gross and palpable informalities in the decision. The original action was brought on the 4th of October 1847, it was struck off on default, on the 11th of August 1848, and re-instituted *de novo*, on the 15th of May 1849. These proceedings involve a range of time exceeding one year and seven months. Now the provisions of Regulation VIII. of 1831 require that all actions to set aside a summary judgment under Regulation V. of 1812, must be instituted within twelve months after issue of final orders. The record shows that the sale of the property attached under the summary process, took place on the 9th of February 1847, so that the plaintiffs (respondents) allowed seven months and twenty-two days of the entire period of limitation to expire before bringing action. Their suit was defaulted ten months and seven days subsequently to institution, and refiled nine months and four days after default, so that, even allowing them the benefit of the period during which the action was depending in the court, to which they are not entitled, they have incurred the lapse of time prescribed under the law of limitations, and forfeited their privilege to be heard, their laches having extended over a period of 16 months and 29 days. The moonsiff, notwithstanding, entertains their suit, *malgre* the remonstrance of the defendant, (appellant) and decrees in their favor; and it is to "set aside a judgment so manifestly contrary to law and precedent, that the present appeal is preferred. I perfectly coincide in the appellant's view in considering the decision at variance with the form and spirit of the enactments made with reference to the subject matter of which it treats, and in virtue of the terms of Circular Order No. 33, dated 13th September 1843, and remand the case for re-trial without any regard to the merits. The moonsiff will consider the foregoing remarks as made with reference to the bar of the suit and record a fresh judgment. He will also explain why he disregarded the technical objection raised by the defendant in the original suit towards its progress.

THE 13TH FEBRUARY 1851.

Case No. 61 of 1850.

*Appeal from a decision of Sreekaunt Singh, Moonsiff of Samuntý, dated 5th January 1850.*

Biresur Rai, (Appellant,) Plaintiff,

*versus*

Hiramuni Dasi and others, (Respondents,) Defendants.

REVERSAL of summary award, under Act V. of 1840. Action laid at rupees 31.

The substance of the plaint is as follows :

The plaintiff holds some lakhiraj land, and a garden, in the village of Bazidpore, consisting of 16 beegahs, to the east of which there is a tank called Muhashai. From this tank, the garden, which is partly cultivated with vegetables of sorts, and partly planted with mangoe trees, is irrigated. The garden was originally let in farm, but brought under khas or proper management in 1250, under the superintendence of one Bubram Mangi. In 1254, the first dispute regarding the right of irrigation took place, when recourse was had to the provisions of Act IV. of 1840, to recover the privilege from which the plaintiff had been forcibly ousted by the adverse party, but the suit was thrown out owing to some informality in the plaint, which named the tank Munsa instead of Muhashai. On the failure of these proceedings the dispossession was confirmed, and the consequent destruction of the crops ensued, causing a loss of 31 rupees, to recover which and the right of irrigation by cancelment of summary verdict obtained by the defendants, the present action was brought.

The defendant, Hiramuni Dasi, denies the plaintiff's right to irrigation from the tank in question, which she claims as the purchased property of her late husband whose heir she is. She adds that the tank was excavated by the plaintiff's ancestor, and could never have been used for irrigation purposes either by him or his successors, such act being deemed little better than desecration by orthodox Hindoos, and, after detailing the ineffectual attempt clandestinely made by the plaintiff through the agency of his gomashtha or agent, during the night, to construct an aqueduct, which issued in his discomfiture in the suit brought under Act IV., concludes by contending that, had the right claimed by the plaintiff existed, it would have found place among the conditions set forth in the deed of sale on the transfer of the property.

The defendant, Ramkomar Mujlia, the late proprietor of the tank, maintains that during his possession the plaintiff's garden was irrigated from it, and favors the views advanced in claim.

Sunkuri Debia and others, prefer a proprietary claim to a two-third share in the tank.

The moonsiff decrees for the defendant, and rules that the right of irrigation is not established. He discredits the testimony of 13 persons examined on behalf of the plaintiff, 4 by himself and 9 by the ameen, because they affirm that the plaintiff held and exercised, exclusively, the right of irrigation, which state of things, he contends, is altogether opposed to the habits and customs of the people. Another reason he gives for rejecting the plaintiff's plea is that, had such exclusive privilege been enjoyed by him, it would have been stated among the conditions of sale when the property passed from his hands during the time of his ancestor. The moonsiff also rejects the ameen's views, as set forth in his report of inquiry, regarding the existence of faint traces of an aqueduct leading from the tank as for irrigation purposes, and considers the marks ascribable to the clandestine attempt ineffectually made by the plaintiff's party, on the occasion detailed in the defendant Hiramuni Dasi's answer. He sees no necessity to enter into the proprietary claim set up by Sunkuri Debia in a suit of the present nature, and dismisses the same.

The plaintiff conceives himself aggrieved by the award, and appeals against it, on the ground that the moonsiff has taken a partial view of the case and decreed for the adverse party, notwithstanding the proofs adduced by him in support of plea. I am dissatisfied with this decision, because it does not definitively determine an issue of fact maintained on the one side and denied on the other. The appellants affirm that they possess a vegetable garden requiring irrigation, contiguous to a tank, which has for a succession of years supplied the water for the purpose. The adverse party contend that the garden in question is a mere mangoe plantation which does not need watering, and has never been irrigated from the tank in dispute. It cannot be a difficult matter to determine which of these two conflicting statements is the true one, although on the adjustment of the point hinges the entire gist of the suit. The moonsiff's judgment is as remote from setting it as if it had never been made. I remand the case, therefore, for fresh inquiry and decision, directing the moonsiff to ascertain, by an investigation conducted in person, whether the garden is as highly cultivated as the appellant declares, how long it has been in that state of cultivation, and from what source irrigated for the last twenty-four years, that period having elapsed since the contested tank was alienated by sale from the appellant's family, or whether it is a mere mangoe orchard neither requiring nor obtaining the process of watering. The result of these issues will at once determine which of the two ought to be maintained.

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THE 13TH FEBRUARY 1851.

Case No. 136 of 1850.

*Appeal from a decision of Nubinkishen Paulit, Moonsiff of Cutwa, dated  
15th March 1850.*

Manik Mundul and others, (Defendants,) Appellants,

*versus*

Kashinath Shuhai, (Plaintiffs,) Respondent.

BOND debt. Action laid at rupees 128-2-5.

The plaintiff sues the defendants for a debt on bond, executed in Phalagoon 1250.

The defendants deny both debt and bond, Manik Mundul affirming that he always signs his name in the Nagri character, and Gungahuri maintaining that had he borrowed the money and signed the bond, he would also have engrossed the deed as he is able to write.

The moonsiff decrees for the plaintiff on the evidence of two witnesses who prove the debt and execution of bond, and the similarity between the alleged signatures on the instrument, and the actual signatures on the retainers and other papers filed in the record by the adverse party.

The defendants appeal against the decision, and ascribe action to enmity. Manik affirms that his name is Manik Chund, and that such is always his signs manual when he has occasion to execute deeds and documents of importance, and such is not the signature on the bond, and Gungahuri contends that there is no similarity whatever between his signatures, real and alleged, compared by the moonsiff.

On a review of the record, I find that the alleged debt has remained in abeyance for six years without demand of payment, although the terms on which it was contracted provided for its adjustment within a much shorter period, about 1 year and 10 months. It is also evident that the appellant Manik Mundul's signature on the bond is written Manik while that on all the other papers filed by him is Manik Chund. I see, moreover, that of the five witnesses subscribing the bond, only two have been examined, and they are quite illiterate, unable to read or write, and that the engrosser of the deed has not been called to bear testimony to it. Under these circumstances, I consider the judgment incomplete, and, reversing it, remand the case for a fresh decision after the examination of the remaining witnesses to the bond and the person who engrossed it, and an inquiry from any source within reach of the usual mode of self designation employed by the appellant Manik Mudul in executing deeds and signing records of moment. Although the appellant did not specifically urge the latter plea in the original proceed-

ings, yet I deem it of sufficient importance towards the equitable adjudication of the suit, that it should form matter for the amended inquiry now ordered.

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THE 14TH FEBRUARY 1851.

Case No. 116 of 1850.

*Appeal from a decision of Tufuzzul Ruhman, Moonsiff of Ousgaon,  
dated 23rd February 1850.*

Sushtiram Sonaputi and Nilochul Sonaputi, (Defendants,) Appellants,

*versus*

Duria Khan, (Plaintiff,) Respondent.

BALANCE of debt. Action laid at 15 rupees.

This action is based on a parole engagement, and the plaintiff affirms that he lent the defendants 60 rupees on the 9th Kartik 1254, and received on account, at different periods, 45 rupees, leaving a balance of 15 rupees.

The defendants deny the debt, and alleged re-payments and ascribe action to hostile feelings, contending that it is not probable so large a sum could have been advanced without a bond or some written engagement. The plaintiff, in his rejoinder, meets the latter argument by stating that the defendants are his tenants, and one of them his "foujdari gomashtha." The moonsiff decrees for the plaintiff on the evidence of two witnesses who, in his judgment, prove the advance, and the testimony of two others who affirm that an adjustment of accounts took place between the litigant parties, and a balance struck after deducting the payments on account. He is also induced to decide in favor of the claim on the examination of the plaintiff's account book which he files, and which contains an entry of the transaction, and is, moreover, attested by his gomashtha, and the repugnance of the defendants to refer the matter to arbitration. He discredits the plea of enmity advanced by them, because he considers the evidence given by the witnesses they cite partial, and, in some respects, discordant.

The defendants appeal against the award, and contend the proofs of claim filed by the plaintiff run counter to the terms of the plaint; in other words, the latter distinctly sets forth that there was no record whatever made of the transaction (and the witnesses examined in support uphold the statement) while an account book is offered and accepted as evidence. They also bring to notice the fact that, in suit No. 117, confirmed in appeal by this court on 10th of December last, the plaintiff brought an action for debt on bond against the appellant's brother, the very individual on whose respectability he affirms in the present suit that he advanced them

60 rupees without bond or writing, the debt secured by deed amounting only to 12 rupees. On a review of the record, I am constrained to state, that there appears a decided leaning in the judgment to the side of power and influence. The plaintiff (respondent) is the talookar of the village, and the adverse party his tenants. He sues them for a debt on parole engagement and on the most insufficient and, to my mind, incredible evidence, the moonsiff decides in his favor, rejecting as unworthy of belief testimony of a respectable character adduced in support of the defensive pleas, without ascribing any reason for such rejection beyond the suspicion that it is partial and, in some measure, discrepant. I do not see what right the moonsiff has to advance the first opinion, and am quite sure he has no just grounds for maintaining the second. To my mind, the evidence is conclusive as to the issue pleaded, and I can entertain no doubt that the action has been maliciously brought with the view of entailing annoyance and expense on the appellants, because they refused to espouse the respondent's cause in some village dispute or measure of his suggestion. I consider the moonsiff's proceeding quite unjustifiable in receiving and acting upon, as evidence, the account book tendered by the respondent after his express declaration in the plaint that there had been no record made of the transaction between the litigant parties; and that officer evinced little discrimination of character, and a very superficial knowledge of human nature to condemn the appellants for objecting to refer the subject matter of their dispute with the respondent to the arbitration of his retainers and defendants, which, in all probability, composed the entire residents of the locality. I cannot compliment the moonsiff on his sagacity and penetration in not being struck with the anomaly of a man making a cash advance, without security, on the guarantee of a person whom he would not trust with the loan of one-fifth of the amount without the execution of a legal instrument. I cannot maintain this judgment. It is altogether at variance with my notions of a correct and impartial judicial award, and I, accordingly, reverse it.

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THE 14TH FEBRUARY 1851.

Case No. 118 of 1850.

*Appeal from a decision of Gopal Chunder Ghose, Moonsiff of Bhaturia,  
dated 23rd February 1850.*

Kalidass Rae and others, (Claimants,) Appellants,

*versus*

Sudha Muni Dasi, (Plaintiff,) Respondent.

Shamu Shaikh, (Defendant,) Respondent.

BALANCE of rent. Action laid at rupees 7-15-18-2.

The plaintiff states that she is a joint proprietor of talook Daguchia, &c., part of which is held conjointly with the other sharers, and part separately by herself. In the latter portion is a parcel of land consisting of 2 beegahs, 15 cottahs, 8 chittacks, which was let in farm to one Ramtunu Bagdi at an annual rent of 3 rupees. This holding was relinquished by the said Ramtunu at the end of 1250, and in Bysakh 1251 transferred by engagement to the defendant on the same terms. He paid the rent for 1251 and 1252, but left a balance of 2 rupees for 1253. In 1254, he only paid 8 annas, and up to Maugh 1255 nothing, incurring an arrear during the last three years of 7 rupees, the principal of the sum sued for. The defendant denies his liability, and maintains that neither does the land belong to the plaintiff nor has he executed any engagement to her for its rent. He adds that his uncle Budurudeen rented 5 beegahs, 11 cottahs of land from Kalidass Rac, the claimant in the suit, and his co-sharers at an annual *jumma* of rupees 2-8, and executed engagement in Chyte 1223, and that, on his uncle's death, he succeeded to his rights as heir at law, and holds possession under a deed of engagement bearing date Jyte 1245.

The claimants, Kalidass Rac and others, advance a proprietary title to the land in question as the undivided portion of the inheritance, and support the issues pleaded in defence.

The moonsiff decrees for the plaintiff, and rules that the claimant's objection is unworthy of consideration from the following circumstances: They file the village accounts from 1252 to 1254, inclusive, under the alleged attestation and signature of their gomashtha Chidam Ghose; but that individual filed a petition before the moonsiff, on the 20th June 1849, stating that the claimants had got certain papers signed by him as their gomashtha while he was not thus employed by them, and a certain deed or engagement engrossed by him as under the execution of the defendant Samu Shaikh, while neither the said Samu was present at the time nor the witnesses whose names subscribe the instrument. Again, the claimants file other papers and accounts under the attestation of one Mudusudhun Sirkar as their agent for the time being, viz., from Jyte 1255 up to date of examination, by his own showing; but the plaintiffs produce copy of a deposition made by the said Mudusudhun before the moonsiff in Sawun 1255, in which he styles himself the gomashtha of Nundkoomar Chele appointed in 1254, Culna, the residence of the last mentioned individual, being 10 *kos* distant from Daguchia, the scene of the present action. The moonsiff further rules that the engagement executed by the defendant to the claimants is a suspicious document, and bears the semblance of fabrication in consequence of the paper being old and the writing fresh, and that one of the two witnesses who bear testimony to its validity, gives his residence as Daguchia in that paper and Isurpore in another filed in the court. The *canoongoe* papers, moreover,



produced by the claimants, contain no specification of the land, but merely an entry of a *jumma* in Budurudeen's name, amounting to rupees 3-2, and are also rejected as evidence making in favor of claim by the moonsiff, who, on the other hand, regards the proofs advanced by the plaintiffs conclusive as to the liability of the defendant for the balance sued for; the engagement executed by him for the land being proved by the evidence of the person who engrossed the deed, and the testimony of the three subscribing witnesses, and the village accounts, showing the arrear.

The claimants appeal, and take exception to the moonsiff's award as determining a question of proprietary title.

They contend that the proceedings of Chitam Ghose, as commented upon by the moonsiff, are fraudulent and perpetrated in collusion with the plaintiffs' party, and that Mudusudhun Sirkar could easily have done the work both of Nundkoomar Chele and themselves, and was actually agent to both; that the witness Ramkoomar had a house in each of the places he has specified as his residence; that the *canoongoe* papers never contain specification beyond that set forth in the document filed by them, and that the defendant confesses judgment to their claim.

The party cast in this suit has not appealed, and the purport of that preferred by the claimants, is the adjustment of their proprietary title, which cannot be determined in a suit for rent. They have their remedy in a regular suit, and can have recourse to that expedient to establish their right, which is not prejudiced by the award made by the moonsiff in the original inquiry. I have carefully perused the record, and deem the judgment equitable and consistent with the evidence advanced in support of action. I therefore affirm it.

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THE 18TH FEBRUARY 1851.

Case No. 8 of 1850.

*Appeal from a decision of Fuzul Rubi Khan, Principal Sudder Ameen of East Burdwan, dated 30th January, 1850.*

Bisheshur Bhuttacharj and others, (Defendants,) Appellants,  
*versus*

Moti Dibe, (Plaintiff,) Respondent.

POSSESSION of property inherited from husband. Action laid at rupees 1089-8.

The plaint runs thus: There were three sons of one Ramram Bhuttacharj, the eldest Guruchurn, the second Gour, and the youngest Kumlakaunt. They all lived together and held in common the patrimonial property. The plaintiff is the widow of the second son and the mother of a daughter and grandchildren. She lived with her brothers-in-law some time after her husband's death, but, in consequence of disputes with the female

branches of their family, she occasionally left them and paid visits to her paternal home. It was during one of these temporary absences about 7 or 8 years ago, that her brothers-in-law divided the estate and dispossessed her of her rights. On being made acquainted with the circumstance, she remonstrated with her relatives against the injustice they had done her, and obtained from them a promise to make her due amends and restore her share. This promise they have not fulfilled, and she now sues for her rights; the elder brother Guruchurn being dead and succeeded by his son the defendant Bisheshur.

(Here follows a detail of the entire inheritance of which the plaintiff claims a third share in right of her husband.)

The defendants deny claim, and affirm that the plaintiff executed a release in their favor in Phalgun 1219, receiving 145 rupees in cash and 6 beegahs of land as a consideration for her portion of the inheritance; that the deed was re-executed, so to speak, in Bysakh 1234, when a division of the property took place by being committed to stamp paper. They further state that one Sunkur Bhutta-charj assigned over to their common parent Ramram a parcel of land consisting of 30 beegahs, 15 cottahs, for religious purposes, to which the plaintiff also lays claim, but such land not forming part of the ancestral estate, and devoted purely and exclusively to the maintenance of a priesthood for the performance of sacred ceremonies, her suit is inadmissible. They also deny her right to sue in *formâ pauperis*, being possessed, they allege, of 14 beegahs of *lakhiraj* land, and engaged in mercantile transactions to the extent of 4 or 500 rupees, and ascribe action to the machinations of enemies desirous of depriving them of the *dewuttur* land. They, moreover, plead the suit barred under the statute of limitation, the release having been executed upwards of twelve years ago, and contend that *dewuttee*, or land set apart for worship, cannot legitimately be divided or apportioned. The plaintiff's rejoinder goes to deny the alleged release.

The principal sudder ameen decrees for the plaintiff on the following grounds. The release filed by the defendants as executed by the plaintiff and attached by two of the subscribing witnesses and a party present on the occasion, is open to the gravest suspicion of forgery; the paper on which it is engrossed crumbling to pieces from decay and age, and the writing fresh and bright. One of the attesting witnesses, moreover, Giaram Chakurbuti, admitted before the court that he could not write, and yet his signature appears on the deed, not as by mark, but written by himself. Again, none of the witnesses can say how the plaintiff signed, or indeed whether she signed at all, and one of them first styled himself Huran Rae, son of Kunai Rai, and subsequently, on another occasion, as Huradhun Rai, son of Ramkunai Rai. As regards the endowment, the principal sudder ameen observes the defendants have offered no

documentary proof whatever, and, without such, the claim cannot be maintained. It is true they cite six witnesses to prove the fact, but the proof is deemed insufficient in the absence of a conveyance or legal transfer. Again, the defendants allege, in their reply, that lands devoted to purposes of religion cannot be divided and apportioned, and yet their witness Bhubunmohun Sirkar distinctly deposes that the dewutee land in question has been divided into equal portions between the defendant's uncle and nephew, and is enjoyed by them. The principal sudder ameen refuses compliance with the defendant's application for a local inquiry as to possession in the absence of documentary proof of right, and, deeming the plaintiff's claim made out by the evidence adduced by her in support of plea, rules her entitled to a third share of the patrimony right of her husband, and decrees possession to lands, tenement, &c. which he enumerates. At the time of the delivery of judgment, the counsel for the plaintiff prayed that the mesne profits might be awarded at the time of execution, to which the principal sudder ameen consented, declaring the plaintiff entitled to wasilant from 1247 to date of actual possession.

The defendants appeal against the decision, and declare the suit barred on account of the plaintiff's omission to state the date of dis-possession enjoined under the provisions of Section 3, Regulation IV. of 1793. They also take exception to the principal sudder ameen's disregard to their objection to the progress of the suit on the ground of lapse of period of limitation, the release being executed in 1234, and the action brought, first, as a miscellaneous suit in 1252 and, subsequently, as a regular suit in 1254.

This a very hard case, and presses sore on a poor widow pauper. She has been defrauded of her rights and barred from the inheritance of her husband, and although she has successfully contended for her privileges against many difficulties and through much fraud and opposition and established her title to her lost possessions, I cannot accord them to her by affirmation of the judgment under review, approve of it as I do, with regard to the inferences drawn; because she has been guilty of a lache and incurred the penalties of a technical error in pleadings. The provisions of Section III. of the IV. Enactment of 1793, are fatal to the maintenance of her suit in its present form, but as the error is fortunately remediable, I rejoice in the opportunity of remanding the case for re-investigation on another point, in order to its leading to the supply of an omission, which has its origin in pure inadvertence, and which operates so powerfully against the rights and interests of an injured party. Among the objections raised by the appellant to the judgment, is the neglect on the part of the principal sudder ameen to dispose of the second issue pleaded in bar of suit, and I find that objection well founded, as the decision contains no record of its determination. The principal sudder ameen should

adjust the plea and state his reasons for the adjustment, and it is to enable him to do so, and to afford the respondent an opportunity of rectifying her lache, that I send back the case for a fresh judgment on its merits.

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THE 20TH FEBRUARY 1851.

Case No. 10 of 1850.

*Appeal from a decision of Fuzul Rubi Khan, Principal Sudder Amecn of East Burdwan, dated 18th June 1850.*

Gungagobind Sirkar, (Defendant,) Appellant,  
*versus*

Mote Dasi, (Plaintiff,) Respondent.

Tarasundri Dibe, (Defendant,) Respondent.

POSSESSION of landed property by cancelment of summary award under Act IV. of 1840. Action laid at rupees 236-14-16-1-1.

This action arose out of the following circumstances: Three brothers inherited a patrimony and held undivided possession: the eldest Dhurumdass, the second Ramdulal, and the youngest Ramlochun. Dhurumdass died first and was succeeded by his grandson, the defendant Gungagobind, and after him, died Ramdulal, who was succeeded by his son Nufurchunder. These two enjoyed the inheritance in common with the surviving brother Ramlochun for a time, after which a division took place and they separated. Ramlochun at last died and was succeeded by his son whose widow the plaintiff is. Nufurchunder also died and left a widow in possession of his rights, Digumburi by name. The plaintiff then purchased the shares of Gungagobind and Digumburi amounting to 86 beegahs, 19 cottahs, 4 chittacks, for 199 rupees, and executed a deed of sale bearing date 17th Aughun 1250; but this instrument does not appear to have received registration till Bysakh 1256, though the purchaser obtained possession under it as soon as the sale was consummated. The purchase comprised all the mal lands of the original inheritance. In the execution of a decree taken out by one Ishurchunder Nyarutun against the said Gungagobind and Digumburi, 12 beegahs of the plaintiff's purchased property were attached as their lakhiraj, together with a dwelling house. Against this proceeding she remonstrated, and her objection was backed by the talookdar, who declared the disputed land as a portion of his rent-paying estate. These claims, however, were both rejected, and the plaintiff was on the point of instituting proceedings for the establishment of her rights by a regular suit, when the attachment appears to have been removed, and the land released; the decree-holder's claim being satisfied by the sale of other property under sequestration at the time. After this occurrence, the deed of sale was duly registered before the pergunnah kazee by Gungagobind and Digumburi in person, on the date above specified. The

former then laid claim to 8 beegahs, 15½ cottahs of the 12 beegahs attached as above, as his *lakhiraj*, and brought a suit under Act IV. of 1840, for possession, which was decreed. It is to set aside this summary award that the present action is instituted.

The defendant, Tarasundri Dibeā, corroborates the statements made in the plaint, and declares the land in dispute plaintiff's mal.

The defendant, Gungagobind Sirkar, denies the sale maintained by the deed filed by the plaintiff and registered as above, and declares the action a ruse to establish the validity of that instrument. He contends that the land is his *lakhiraj*, and that a suit to settle the question of mal and *lakhiraj* cannot be sustained without the participation of the talookdar, or his being made a party to the action. He takes exception also to the plaintiff's omission to state in the plaint the annual rental of the land alleged to have been purchased from him, and affirms that, of the entire lands appertaining to the inheritance, 86 beegahs have been let in farm by all the sharers at an annual rent of rupees 133-13-8, the engagements for which he holds. He denies the registration of the deed of sale in company with his co-parcener Digumburi, and avers she was in Calcutta at the time of its alleged execution. He concludes by asserting that the plaintiff first ousted him when he applied for possession under the provisions of Act IV. of 1840, and obtained it, and argues that the fact of the plaintiff's holding the quittances of rent for the 86 beegahs above alluded to, cannot be taken as evidence of proprietary title, as she may have obtained the receipts collusively from the *gomashta* in consideration of the *jumma* originally standing in her husband's name.

The principal sudder ameen rules that the issues pleaded in bar of action by the defendant are nothing worth, and have been determined by his proceeding of date 8th May 1850. He then proceeds to adjust which of the two points in litigation is most entitled to consideration, *i. e.*, whether the land in dispute is the plaintiff's mal by purchase, or the defendant's *lakhiraj* by inheritance. As regards the latter, the presiding officer rules that nothing in the shape of proof has been adduced, the defendant failing to file any taidad or original grant, and the collector's inquiry fairly establishing the land as mal. The evidence on the opposite side, however, he considers conclusive to the issues pleaded; the registered deed of sale being proved by five witnesses and establishing purchase under the circumstances detailed in plaint, and the engagements and quittances of rent fixing possession, the titles alleged as being held by the defendant not being forthcoming. He remarks in the conclusion of his decision, that the witnesses examined on behalf of claim, distinctly state that the defendant himself engrossed the deed of sale, and on a comparison between it and another instrument of the same kind admitted by defendant as executed by him, the writing was so exactly similar as to leave no doubt on his mind that both documents

were written by the same person. *He therefore decrees for the plaintiff*, and declares her entitled to the land held by the defendant in virtue of the award under Act IV. of 1840, hereby annulled.

The defendant appeals against the decision, and maintains that the action has been brought on insufficient valuation, the deed concerned involving a purchase for 199 rupees. He also takes exception to the neglect of the court of first instance to adjust the fact of possession by local inquiry, that being the point at issue between the litigant parties, and to determine by inquiry whether or not Digumburi was in Calcutta at the time of execution of deed of sale, as alleged by him. He regards it as an argument fatal to the claim of the plaintiff, that the instrument on which it is based was registered upwards of five years after execution, and that only 2 out of 8 witnesses subscribing the deed have been cited in support of it. He denies the alleged similarity in writing between the two kuballas, contends that the agreements and quittances of rent have not the attestation of the gomashtha, and maintains that Madhubchunder Dutt had no authority to sign for Digumburi in the manner set forth in the deed of sale.

I am not disposed to give much weight to any of the grounds assumed in appeal. The action is properly laid involving as it does a question of mal and lakhiraj and valued at eighteen times the annual rent of the land in dispute, which is 8 beegahs at rupees 13-2-12 per annum.

Respondent was not required to bring her action at the higher valuation indicated by the appellant, as she had not been dispossessed of the whole but only part of her purchased rights. There was no occasion, in my opinion, to determine by local inquiry the point of possession, in the absence of the very semblance of proof of proprietary title, and the fact of Degumburi's presence at the execution of the deed of sale and participation in the act, is too well established by evidence to need other inquiry. There can be no possible doubt as to the identity of the handwriting between the two kuballas noticed by the principal sudder ameen, one of which the appellant admits to be his performance, and the agreements and receipts are to my mind quite credibly enough supported under the circumstances.

The plea that Madhubchunder had no authority to sign the deed for Degumburi, is disingenuous; for the evidence goes to prove, in distinct terms, that he is her own brother and was commissioned by her to affix her signature at the time of execution. I am somewhat at a loss to reconcile the delay in the registration of the deed, and the change of feeling evinced by the appellant towards the respondent very soon subsequently to the transaction, as shown in the plaint; but I cannot allow this doubt, this mental reservation, if I may so express myself, to oppose in its nakedness the mass of evidence, oral and documentary, adduced in support of claim. I

therefore dismiss the appeal, and affirm the award made by the principal sudder ameen in favor of the respondent. The respondent has satisfactorily explained why she only called two of the subscribing witnesses to attest the kuballa, and her reasons for substituting the evidence of the rest by the testimony of parties present at the transaction.

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THE 21ST FEBRUARY 1851.

Case No. 11 of 1850.

*Appeal from a decision of Fuzul Rubi Khan, Principal Sudder Ameen of East Burdwan, dated 18th June 1850.*

Abdari Beebee and others, (Plaintiffs,) Appellants,

*versus*

Tarasundri Dibeas and others, (Defendants,) Respondents.

TRANSFER of name in a recorded holding. Action laid at 12 rupees.

This case is intimately connected with the foregoing, and may almost be considered as part of it.

The plaintiffs sue for the transfer of their names in the zemindarry records on the ground of purchase, and aver that the defendant Gungagobind Sirkar sold them  $4\frac{1}{2}$  beegahs of the land registered in the name of Ramdhun Sirkar. Now the widow of the said Ramdhun is the plaintiff, and the said Gungagobind the defendant in the preceding action.

The defendant Gungagobind admits sale and confesses judgment.

The defendant Moti Dasi pleads the same issues as in the preceding suit, and claims the land in right of purchase proved and established.

The defendant Tarasundri sides with the defendant Moti Dasi, and supports her pleas.

The principal sudder ameen, in dismissing the claim and decreeing for the defendants, refers to the grounds of his judgment in the foregoing suit, and rules that the alleged purchase cannot be maintained, because the deed on which it is based is not registered, while that by which the defensive claim of purchase has been brought and established has received registration, and is in every respect more entitled to consideration.

The plaintiffs appeal against the decision, and contend that their deed is of anterior date to that filed by the opposite party, and that the witnesses cited by them prove the issues pleaded. They also take exception to the refusal of their application for a local inquiry into the matter of possession by the court of original jurisdiction.

There can be little doubt that this action has been fraudulently brought at the instance of Gungagobind with the view of

prejudicing Moti Dasi's suit, as above. The exhibit on which claim is founded has not received registration, and cannot, consequently, be put in competition with, or affect the rights conveyed by a deed which possesses that advantage over it: see precedent maintained in the decision of the Sudder Dewanny Adawlut No. 107, dated 25th April 1833. It is, moreover, the very document referred to in the preceding judgment as prepared by Gungagobind from his own admission, and his motives for affixing to it a date anterior to that borne on the instrument under which Moti Dasi was successfully prosecuting him for the restitution of her rights, are too obvious for comment. I do not think the principal sudder ameen was required to grant the application for a local inquiry into possession in the absence of all documentary proof, whatever, of right, title, and occupancy. I see no reason to disturb the award he has made.

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THE 24TH FEBRUARY 1851.

Case No. 138 of 1850.

*Appeal from a decision of Doobeerooddeen Mahomud, Moonsiff of Madpore, dated 13th March 1850.*

Bidenath Ghosal, (Defendant,) Appellant,

*versus*

Durgadass Ghosal and others, (Plaintiffs,) Respondents.

**BALANCE of revenue.** Action laid at rupees 31-15.

This suit was tried *ex parte*, although the defendant appeared in the court of first instance, but not in time to plead in answer to the plaint filed against him. The moonsiff decreed for the plaintiff, and adjudged them entitled to the balance they claimed on the ground of the proofs adduced in its support.

The defendant appeals against the decision, and contends that he has a right to be heard in defence of action, having appeared in the lower court, though too late to plead.

I admit his appeal, and remand the case for a fresh judgment upon a consideration of the pleas urged against claim. It has lately been ruled by the Superior Court, that the intention of Circular of 12th of March 1841 is not to deprive a party of appeal who presents himself, though late, before the court of first instance, but to affect that right only in the case of those who do not appear at all.





## ZILLAH WEST BURDWAN.

PRESENT : R. N. FARQUHARSON, ESQ., OFFICIATING  
JUDGE.

THE 10TH FEBRUARY 1851.

No. 179.

*Appeal from a decision of Moulvee Asudoollah, Moonsiff of Radhanagore, dated 5th September 1850.*

Huneef Mundul, (Plaintiff,) Appellant,

*versus*

Pearceloll Biswas and others, (Defendants,) Respondents.

Dwarkanath Biswas and others, Oozurdars.

SUIT laid at rupees 14, 6 annas.

Plaint for possession of an ara in Seealmaree Pokur, mouza Rutnapoor, also for an ara in Dosooteneea talab in the same mouza.

The moonsiff nonsuits plaintiff on the following grounds :

*First.*—That one ara (that of Secalmaree Pokur,) claimed as in mouza Rutnapoor, is situated in mouza Gaonbeera, which is in Chowkee Soonamookhy, and, therefore, without his jurisdiction as moonsiff of Radhanagore.

*Secondly.*—That plaintiff has only an 8 anna share in the property claimed, and should have included the other 8 anna sharer as joint plaintiff in the case.

I have examined the map and evidence on which the moonsiff grounds his first reason for nonsuit, and differ entirely from him as to the situation of the ara in question, (that in Seealmaree, which alone has come under consideration) it is evidently situated in mouza Rutnapoor. The small portion of land within Seealmaree Pokur, said to be in possession of defendants as part of Gaonbeera, does not at all prove their right to the entire Pokur, nor affect the ara situated on the opposite side. The Pokur is bounded on the north by a road which the evidence proves, in my opinion, to be the boundary between Gaonbeera and Rutnapoor: on the other three sides are, without dispute, the lands of Rutnapoor, on that side farthest removed from Gaonbeera is the disputed ara.

The 8 annas share in question was disposed of by the moonsiff when he issued the ishtchar of the 25th August 1849, under Clause 4, Section 6, Regulation V. of 1831. The fifteen days therein

allowed having elapsed before the case came on for hearing, there remained no ground for nonsuit on this plea.

The appeal is, therefore, decreed, and the moonsiff's order of nonsuit set aside. The value of stamp expended in appeal, to be returned to appellant, and the case sent back to the moonsiff for investigation and decision on its merits, with remark that the appointment of a mohurir of his court, in place of one of the regular ameens to investigate the local question of jurisdiction, was altogether irregular and calls for explanation.

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THE 11TH FEBRUARY 1851.

No. 197.

*Appeal from a decision of Noorul Hossein, Moonsiff of Bishenpoor, dated 4th September 1850.*

Kanye Potdar and others, (Defendants,) Appellants,

*versus*

Gunganarain Bhuttacharge, (Plaintiff,) Respondent.

GUNGANARAIN claims right and title to possession of a half share in 5 beegahs of land in Dhulbaree Shalee and Babajeebaree, both in mouza Bishenpoor, valued at 31 rupees. He states that his ancestor Ramdhun Bhuttacharge procured, from certain khoas assamees, a pottah for 5 beegahs as above, which were held by Ramgobind and himself on joint occupancy, till one Budinath Potdar, deceased, sued these khoas assamees for debt, and obtained a decree on which their right and title to these 5 beegahs was sold to one Nundo Chootar, deceased, by whom plaintiff and Ramgobind were dispossessed in 1242 B. S.

One Neerunjun Potdar, in connection with Budinath Potdar, instituted a suit in court, No. 4330, claiming possession of these five beegahs on pottahs likewise held from the khoas assamees, which suit was decreed in Neerunjun's favor. Plaintiff further states that he and his co-sharer were connected with this suit and participated in the order in favor of Neerunjun, dated 23rd January 1837, and being still ousted from possession, they sued for the same on 30th January 1840, No. 33, and this case being struck off (September 8th 1840,) as appertaining to lakhiraj rights, they instituted another suit, on the 20th April 1842, No. 91, which was also struck off on account of the value being stated in Sicca instead of Company's rupees.

Kannye, (grandson of Budinath) defendant, states that his right of possession is derived from Neerunjun; and urges:

1st.—The statute of limitation as barring Gunganarain's claim.

2nd.—Non-service of notices on certain parties to the suit.

3rd.—Non-investigation of his claims to hold from Neerunjun.

The moonsiff decrees in favor of the plaintiff, Gunganarain • Bhattacharge; because certain heirs of Neerunjun Potdar, who are with Kannye Potdar defendants in the suit, enter durkhasts acknowledging his, Gunganarain's, right.

On the 3rd May 1850, the moonsiff held a proceeding, with reference to the statute of limitation, to the effect that plaintiff, Gunganarain, must produce a precedent to show that his claim does not come within its provision. No such precedent was produced, yet, on the 13th August 1850, the moonsiff decided that the suit was not barred by the statute of limitation, because the time should count from the court's order of the 8th of September 1840, that order containing permission for parties (plaintiff and his co-sharers,) to bring another suit in proper form.

The moonsiff's proceedings are erroneous and insufficient, *First*, because the order of the 8th September 1840, was illegal and, therefore, not binding in any way: calculation of the period for limitation should be made according to the rule laid down in the Sudder Dewanny's Decision of the 26th July 1847, Select Reports, vol. 7, page 375, viz., taking the dispossession of 1242 B. S., (the original cause of action) as a starting point, and deducting the periods during which the case was pending under Nos. 33 and 91.

*Secondly*.—The objection of appellant to the non-residence of the khoas assamees, in the place indicated in the notice served on them, was not sufficiently investigated or attended to; the moonsiff's own roobukarry of the 13th August, acknowledging that they do not reside in Bishenpoor.

*Thirdly*.—The main point of Kannye appellant's plea, viz., his right to possession as derived from Neerunjun, has not been investigated at all. The appeal is decreed. The order of the moonsiff reversed, and the case remanded for re-investigation. Value of stamp expended in appeal to be refunded to appellant.

THE 13TH FEBRUARY 1851.

No. 199.

*Appeal from a decision of Noorul Hossein, Moonsiff of Bishenpoor, dated 16th September 1850.*

Kinaram Soho, (Defendant,) Appellant,

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*versus*

Gunesh Chund, (Plaintiff,) Respondent.

CLAIM, rupees 46, viz., original debt rupees 23, interest rupees 23.

Gunesh Chund states that Kinaram first borrowed from him rupees 9, and subsequently, on 11th Aughun 1246 B. S., rupees 14

more, giving an ikrarnamah for the whole of rupees 23, of which nothing has been paid up to this time. Kinaram denies all knowledge of the transaction. The moonsiff decrees in favor of Gunesh Chund, plaintiff, on the grounds that the ikrarnamah produced by him, as executed by defendant, is a good and sufficient document, as proved by oral evidence taken before him on the subject.

I differ from the moonsiff as to the proofs adduced, decree the appeal, and return the case for further investigation, which should include examination of Gunesh Chund's khata-buhee, as to entry of the debt therein, of witnesses as to there being enmity against Kinaram, on part of Kishen Chowdree and his (Kishen's) connection with the plaintiff, of other papers known to be written by Kinaram, with a view to identification of his handwriting with the signature on the bond. Value of stamp expended in appeal to be refunded.

THE 14TH FEBRUARY 1851.

No. 186.

*Appeal from a decision of Abdool Uzeez, Moonsiff and Sudder Ameen of Bancoorah, dated 29th August 1850.*

Narain Basoorce, (Defendant,) Appellant,

Haradhun Muduk, (Plaintiff,) Respondent.

Neerunjun Shah and Narain Shah, Oozurdars.

CLAIM, for 120 rupees, 3 annas and 9 gundas, rent of land in mouza Russoolkoond, including interest, for the years 1249 B. S. to Kartick 1255 B. S., inclusive, at 19 rupees, 3 annas, and 4 gundas per annum, as per ikrarnamah filed with the misl.

Defendant denies the ikrarnamah, and also being ryot of plaintiff's, states that the village is an hereditary mokururee of Neerunjun Shah and others, whose rights are antecedent to those of plaintiff, and from whom the mokururee rent of the land should be demanded.

The moonsiff decrees the case to plaintiff on the ikrarnamah as proved by oral evidences and corroborated by the putwaree papers of 1246 to 1254 B. S. \*

This case was formerly nonsuited by another moonsiff on ground of the defendant being only a shikmee holder, but, on summary appeal to the judge, was returned for re-investigation as to the sufficiency or otherwise of the ikrarnamah adduced in evidence of claim.

The present appeal reiterates denial of the ikrarnamah, and points out that, being on plain unstampt paper, it should not be admitted as evidence, with other objections which need not be detailed here.

The one point alluded to by appellant, disqualifies the case from trial: the ikrarnamah is on plain unstamped country paper, and being neither a pottah nor kubooleut, and exceeding 12 rupees per annum value, is inadmissible under Regulation X. of 1829, and with reference to a late decision of the Sudder Dewanny, 17th September 1850, on case No. 203 of 1846, and the subsequent Circular Order No. 19 of the 27th idem. I, therefore, decree the appeal, and reverse the moonsiff's order, returning the case for re-investigation on the points and precedents above alluded to. The value of stamp expended in appeal to be refunded to appellant.

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THE 27TH FEBRUARY 1851.

Case No. 207 of 1850.

*Appeal from a decision of Kazeem Amildady, Moonsiff of Soonamookhy, dated 26th November 1850.*

Lokenath and others, Oozurdars, Appellants,

*versus*

Nufferehund Mundul and others, Plaintiffs,

and Nukee Mirdha, Defendant.

Rupees 11-13-10, arrears of rent.

THE plaintiff states in this case that, in mat Gudaguria, mouza Bohurpoor, the defendant holds  $2\frac{1}{2}$  beegahs of land paying a yearly rent of 1-4; that he took them on the 15th Bysack 1255, (when a pottah was given, and kubooleut taken from him,) and duly performed his engagement, and paid up all his rent to 1248, since which time he has paid nothing; that on the 17th Chyete 1255, he was found to be in balance 11-1, when he admitted that this sum was justly due and signed the account, then made as correct; that as he has still continued to neglect paying, plaintiff now seeks to have it enforced, and, therefore, sues for the sum due with interest, &c., amounting in all to the sum stated above.

In reply, the defendant denies the truth of the claim, and states that he neither gave the kubooleut or signed the account; that the land sued for, is not plaintiffs at all, but is lakhiraj, and belongs to Gunesh Hajrah; that it consists of 2 beegahs, 12 cottahs, and was let to him (defendant) on the 19th Phalgun 1230, at a yearly jumma of 2-1-1, since which he has always held it; that plaintiff brings this suit solely to obtain the land and add it to his own estate, &c.

Lokenath and others, oozurdars, reply to the same effect, and declare that the land is their hereditary lakhiraj property.

On the 26th November 1850, the moonsiff, after completing his inquiries, decrees the case for the plaintiff. He remarks that plaintiff has fully established his case; whereas the defendant has

quite failed in this, and though the oozurdars have filed the kuboolaut and given in a list of witnesses, still the former is, in his (the moonsiff's) opinion, suspicious, and looks as if it had been newly written upon old paper; whilst with regard to the witnesses, they (claimants) though called upon to come and swear that their evidence was really and materially necessary, have totally neglected to do so, whilst they have, at the same time, filed no taidads or other satisfactory proof of the justice of their claim. Under these circumstances, he awards the case to the plaintiff.

The oozurdars appeal. They state that the moonsiff has acted in contravention to the orders of the Sudder Dewanny Adawlut, in this case, inasmuch as he has decided it upon a paper (the hisab) which was unstampt when filed in the court; that the case is one of mal and lakhiraj land, and, therefore, should not have been entertained in the moonsiff's court; that they had not time to come in and swear as required by the moonsiff, as the case was decided very shortly after the close of the vacation, and that plaintiff's case is bad, or he would certainly not have allowed the defendant to retain a balance for the time he mentions, without taking some steps to make him pay, &c.

The orders passed by the moonsiff in this case, cannot possibly be upheld, as he has, in the first place, omitted to draw up the proceedings required under Section 10, Regulation XXVI. of 1814. Besides which, he has admitted as a valid document, the account alluded to by the appellants, and which when filed in the court, was unstampt, which is contrary to the rule laid down in Circular Order of 27th September 1850. For the above reasons, I decree the appeal, and, reversing the moonsiff's orders, remand the case for revision and correction. The usual order for the return of stamp.

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## ZILLAH CHITTAGONG.

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PRESENT : A. SCONCE, ESQ., OFFICIATING JUDGE.

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THE 13TH FEBRUARY 1851.

No. 325 of 1850.

*Appeal from a decree of Khyroollah Shah Budukshanee, Moonsiff of Zorawurgunge.*

Ramsunker and Fejee Ram, (Defendants,) Appellants,

*versus*

Ramkishno, (Plaintiff,) Respondent.

I FIND no grounds to interfere with the decree of the lower court in this case, who, affirming the validity of a bond, dated 13th Assin 1209, for rupees 24, decreed this sum, with interest, against the defendant, appellants. The defendants denying the transaction, attempted to neutralize the plaintiff's evidence by adducing witnesses to show that, for several years, the parties had been on unfriendly terms, and that Fejee Ram, one of the defendants, was a minor: but the statements of the witnesses upon three points are unsatisfactory and insufficient for the purpose intended. Indeed, two of the witnesses say that Fejee Ram had attained his majority, and though the third says he was a minor, he gives no particulars from which the age of Fejee Ram can be inferred. I reject the appeal.

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THE 15TH FEBRUARY 1851.

No. 327 of 1850.

*Appeal from a decree of Khyroollah Shah Budukshanee, dated 21st June 1850.*

Jorabebee, (Plaintiff,) Appellant,

*versus*

Mullar Ma, Aleemoodeen and others, (Defendants,) Respondents.

THIS suit must be remanded for further inquiry, and for a more explicit examination of the points at issue by the moonsiff. Plaintiff, appellant, seeks to recover possession of a 2 annas share of certain lands left by her husband Sunaoollah. She says that her husband and Shookoor Mahomed, held, in equal shares, 1 krant, 4 gundahs of a talook, Bheloo Bhooiya, and 5 gundahs, 2 cowrees of a talook, Magun Tota, in all k. 1-9-2: half of this she says



was her husband's. Again, distinct from that land, she says her husband held on account talook Magun Tota, another portion amounting to 13 gundahs, 2 krants. Thus, of both descriptions as thus set forth, she seeks a 2 annas share.

I cannot clearly describe my dissatisfaction with the moonsiff's judgment, because I do not understand it. He seems to say that the plaintiff sued for land not possessed by the defendants: if this be his meaning, let him carefully record the grounds by which he arrived at this conclusion. I do not find that this was pleaded by the defendants. On the contrary, it is said that what the plaintiff's son has got, is barely enough to support himself, and that nothing is available for the plaintiff.

Again, Mullar Ma, in her answer, declared that 6 gundahs, which was included in the plaint on account of the talook Magun Tota, was never possessed by Sunaoollah, at all, and that it was bought by herself, with her own money. The moonsiff makes no allusion at all to this totally distinct issue.

Let the moonsiff first ascertain that the parties before him have a clear apprehension of the land in dispute. Let him then inquire whether the defendants holding the land so specified, resist the claim made by the plaintiff: and, next, let him consider the pleas by which both sides support the right severally adduced by them.

In re-disposing of this case, the moonsiff will also state clearly his reason for disallowing the plaintiff's claim to certain moveables. The value of the stamp will be refunded.

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THE 18TH FEBRUARY 1851.

No. 99 of 1850.

*Appeal from a decree of Moulvee Abdool Hossein, Moonsiff of Hathazaree, dated 29th January.*

Suda Ram, (Defendant,) Appellant,

*versus*

Mahomed Daim and Koolochunder, (Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiffs, respondents, as proprietors of turuf Tiluk Chunder, kismut Ombeka, to recover possession of a tank named "Neyun," which was recorded by the recent revenue measurement under dag 1663, as portion of their estate, though stated to be in the immediate occupancy of Suda Ram. Several answers were filed by different parties; but I need only mention that of Suda Ram, who averred that the tank belonged to the turuf Nund Ram, of which he has a half share.

The moonsiff disposed of the case without any effort to estimate the actual value of the evidence before him. He held the tank to be proved to belong to the plaintiffs' turuf, from the measurement chittahs, the evidence of witnesses, the answer of a defendant,

Doorga Dass, and the circumstances of the case: but in fact, excepting the measurement chittahs which no one denied, and which Suda Ram had instituted a separate suit to correct, he had nothing to go upon. Plaintiffs had three witnesses examined, and all three said *they could not tell* to what turuf the tank belonged.

Simultaneously with this suit, the lower court disposed of that instituted by Suda Ram, seeing that the right at issue and the evidence to govern the issue, was the same in both cases. In the second case also Suda Ram appealed, but having inadvertently failed to complete the usual service of notice on the respondents, his appeal was struck off in default. Referring, however, to the evidence adduced by him in that suit, which was accepted by the moonsiff as equally applicable to this action, I find that once before, in the civil court, the opposing claims of the proprietors of turuf Tiluk Chunder and of Suda Ram to this tank, Negin, were under trial. The former proprietors of turuf Tiluk Chunder, sued to recover the value of certain fish taken by the defendants from this tank; but, on the 23rd April 1833, it was held by the moonsiff who decided the suit that it was proved that the tank belonged not to turuf Tiluk Chunder, but to Negin, the ancestor of defendants. Besides, it was added that, as the plaintiffs recited in their plaint that they had got rent from the tanks from the occupants, it was the province of the latter, not the plaintiffs, to sue for the value of the fish if irregularly taken; but still there remains the affirmative judgment in favor of Suda Ram, and against Bukshoo Nazir and Sunaoollah, then the owners of the turuf Tiluk Chunder, which is now held by these present plaintiffs. Since the decision of the old suit in 1833, we have no evidence that the proprietors of turuf Tiluk Chunder, ever derived any rents from the disputed tank or ever exercised possession over it. As already said, they have adduced only three witnesses, and these witnesses' statement are confined to what they had heard; they say nothing that they themselves knew.

Further, I observe that the appellant has filed copy of a petition presented by him to the deputy collector in the course of the settlement operation of the district, in which he represented that the tank at that time had been placed under turuf Syed Mahomed Arshad, and required it to be transferred to his own turuf Mendrain, but, as the land was considered to be waste and unassessable, the settlement officer declined to take the case into his consideration. I state this to show that though the measurement chittahs of the collector are undoubtedly to be regarded as evidence of the proceedings of the revenue authorities, and of the result of these proceedings, in the present instance, the case of the appellant cannot be prejudged by the chittahs as his claim was not investigated.

My conclusion is, then, that the plaintiffs Mahomed Daini and Koolochunder have not proved their case, and I must so decree.

I reverse the moonsiff's decision, and dismiss the suit. The plaintiffs will pay Suda Ram's costs in both courts.

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THE 18TH FEBRUARY 1851.

No. 324 of 1850.

*Appeal from a decree of Baboo Poornochunder, Moonsiff of Howlah,  
dated 22nd June.*

Ramjewun, (Defendant,) Appellant,

*versus*

Jeetram *alias* Byekooah, (Plaintiff,) Respondent.

THE parties to this suit live in adjoining premises in all the ground occupied by houses and as open, is 18 gundahs more or less ; of which one-third belongs to plaintiff, respondent, and two-thirds to the defendant, appellant. Now it was the purpose of the plaintiff in instituting this action, to show that the open court, or oothan, between their respective houses had been used by himself and father for more than thirty years in common with the defendant ; and as the defendant had enclosed his own share with a fence, thereby confining plaintiff to his own narrow premises, and depriving him of the use of the larger oothan, he sought to have the oothan kept open as before. The defendant asserted his right to the exclusive possession and use of his own recognized share of the land.

The moonsiff finding that the plaintiff had jointly with the defendant the common use of the oothan for more than twelve years, decreed the suit in his favor, and against that order, the case comes before me in appeal. There seems to be no room to doubt the facts of the case ; on the one hand, the plaintiff Jeetram, both in his plaint and verbally in this court, admits that he has no right of property beyond the 7 gundahs represented by the daghs 5532 of the revenue measurement, of which his own premises consist ; and, on the other, even from the statements of the defendant appellant's witnesses, it is plain that the plaintiff, respondent, had access to the open oothan for all ordinary purposes. But the difficulty which I find is this, whether, by the sufferance of the appellant, or by the facilities which, as a neighbour and a relation respondent possessed, I am to recognize a right created in his favor to the possession of more property than he professed to be entitled to. In his plaint, Jeetram says that his own oothan being narrow, Ramjewun let him use his. This is the foundation of the right which he seeks to establish ; but, though I admit that the plaintiff's access to and use of the oothan for many years are proved, I cannot say that the defendant, appellant, had foregone or intended to forego any portion of his own property, or that he ever recognized plaintiff's right to possess with himself an *equal* interest in

the oothan. To confer upon the plaintiff a permanent interest in the oothan corresponding with the defendant's, would be to extend his property beyond his proper share. It was a neighbourly act and an accommodation on the part of the appellant, to allow the respondent to use his larger oothan, but I am unable to say that, in so doing, he forfeited, in any degree, his sole interest in the property or debarred himself the opportunity of disposing of the property, in any manner he should please. No doubt 6 or 7 gundahs is less than 12 gundahs; respondent's premises are more confined than appellant's premises, but this inequality I cannot attempt to redress. For the rest, though it is hardly a matter to be taken into consideration, respondent has an oothan, though small, of his own, and he can enter and depart from his premises without passing through those belonging to the appellant.

I reverse the decree of the lower court, and dismiss the suit, charging all costs to the plaintiff, respondent.

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THE 25TH FEBRUARY 1851.

No. 315 of 1850.

*Appeal from a decree of Baboo Satcowree Deb, Moonsiff of Bhatearee,  
dated 13th June.*

Suffer Ali, (Plaintiff,) Appellant,

*versus*

Baker Ali and others, (Defendants,) Respondents.

SUFFER ALI, the cultivator of one kanee of land, instituted this suit to recover the excess rent levied for the years 1209 and 1210; the rent for each year being taken both by Beejoo Ram Mundul and by Baker Ali.

The moonsiff found it proved that the plaintiff's mother had given a kabooleut for the land in question to Baker Ali, and seeing that Baker Ali levied rent corresponding with that kabooleut, he dismissed the suit. But the plaintiff had made Baker Ali and Beejoo defendants, and it was obviously necessary, in affirming the possession of one or other of the parties, to declare that the defendant, *not* in possession, should refund what he had irregularly levied.

The moonsiff's decree being thus imperfect, I have gone through the proceedings. Baker Ali's plea was that he had bought the land from the talookdars Wullee Beebee and Khoosh Banoo; but these parties deny this sale, and Baker Ali has offered no proof ~~whatever~~ of his purchase or of his possession conformable with his alleged purchase. All that he has done is to prove the kabooleut

given by Soola Bebee, mother of the plaintiff, appellant; and though I am not disposed to deny that this is proved, the inference is obvious that Baker Ali availed himself of the absence of Suffer Ali to take a kubooleut for the land which, during her son's absence, Soola Bebee was left in charge of. Plaintiff's witnesses prove that his father first, and Suffer Ali afterwards, have held the land in question for twenty years; farther that they paid rent to Beejoo Ram; nay, even one of the defendant's witnesses says that he understood Beejoo was the person who used to receive the rent payable by Suffer Ali.

Under such circumstances, clearly, Baker Ali has shown no cause for the claim made by him; and he must refund the 3 levied by him, as he admits, for 1209, and 4 rupees the value of the property distrained by him and sold for the rent of 1210, together with interest on the same from the institution of this suit. The appellant's costs in both courts will be charged to Baker Ali; and to the same party Baker Ali, the costs incurred by Beejoo Ram.

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THE 26TH FEBRUARY 1851.

No 317 of 1850.

*Appeal from a decree of Baboo Poornochunder, Moonsiff of Howlah,  
dated 15th June,*

Kalee Sunker Chowdree, (Defendant,) Appellant,

*versus*

Musst. Goonoseela, (Plaintiff,) and others, Respondents.

THE issue brought before me in this appeal is simple. It is only this, whether the dagh No. 51 of the late revenue measurement in mouza Allah for 10 gundahs 3 cowrees, belongs to the turuf Moorareedhur Canoongoe, of which this appellant is proprietor, or to lakhiraj land designated Sheehoo Chowdree, being as such part of 1 kanee bought by Sutternarain, husband of the plaintiff Goonoseela, in 1177 Muggee, or 1815 A. D. The moonsiff found the plaintiff's, Goonoseela's, claim to be good; and, though I cannot go so far as this officer in identifying the land of dag 51 with that of the dag No. 11 of the 1126 (1764) measurement, I think that his judgment on that point must be affirmed.

Appellant bought the turuf Moorareedhur in 1844. He urges that the revenue measurement has definitely affirmed the dag 51 to belong to his estate; that he only bought the turuf in 1844, and that when the measurement began some years before, Goonoseela's husband was one of the proprietors of turuf Moorareedhur, and countenanced the assignment to the turuf of the very land which his widow now litigates as lakhiraj.

No doubt the connection of Sutternarain with the turuf raises much suspicion; but we have no evidence that the dag No. 51 was placed under the turuf at his instigation; and, on the contrary, the evidence is of the strongest kind, that the land was held by Goonoseela, and, previously, by her husband, independent of the turuf; and that Sutternarain purchased it independent of the turuf.

The moonsiff had overlooked the necessity of requiring proof of the purchase of the lakhiraj by Sutternarain in 1177 M. S., I, accordingly, gave Goonoseela an opportunity of giving evidence in support of the deed of sale which she had filed, and, farther, I suggested to both parties the expediency of offering evidence relative to the appropriation of the profits of the land before the year 1177, in which, as lakhiraj, it came into the hands of Sutternarain.

The evidence now before me is of the most satisfactory kind. It is proved by plain and unhesitating evidence that, in 1177, Sumboo Ram sold one kance as lakhiraj to Goonoseela's husband: farther we have evidence that this land was cultivated at one time by Moorad, and, next, by his son, Ali Mahomed, or Futeh Ali; and that from these parties, and for the land so sold, first Sumboo Ram, afterwards Sutternarain and Goonoseela derived the annual rent.

Not only so; it is shown that Sutternarain alienated certain property as a gift to his wife; that so far back as 1835, (several years before the revenue measurement was made,) this gift was ratified in the civil court; and that in a schedule which accompanied the deed of gift was entered the one kance cultivated by Ali Mahomed, son of Morad. The connexion is complete between the disputed land now cultivated by Futeh Ali, and that purchased by Futeh Ali, and that by Sutternarain in 1177. What Sutternarain bought as lakhiraj, he cannot be said to have acquired as turuf.

Such, then, is the case between the parties. We have excellent evidence on the part of Goonoseela to show that the disputed dagh was not originally turuf land; and we have no evidence from this appellant that the disputed dagh was originally settled as part of his turuf Moorareedhur Canoongoe.

Appellant argues that the lakhiraj tenure, of which Goonoseela declares this to be part, is complete without it, and that, if she had any complaint against the assignment of the dagh 51, she should have appealed to the special commissioner. Now, in answer to this objection, it is enough to say that no resumption suit was ever held with regard to dagh 51, and that the distribution given to the land in the measurement chittahs, gave no jurisdiction to the special commissioner; and, farther, whatever may have been the amount of land assumed to constitute the lakhiraj Shehoo Chowdree, and whoever the parties assumed to be the occupants of that land, the right of this plaintiff, Goonoseela, could not be prejudiced by those proceedings.

I have already said that I cannot profess to indentify the daghs of the 1126 measurement. The chittahs of that measurement are shown to be effaced and imperfect. Both an ameen and the moonsiff himself attempted to trace the daghs; but they differ from each other, and, after much trouble, I am unable to reconcile their statements with the insufficient record of that very early measurement.

Thus I affirm that part of the order of the moonsiff which declares dagh 51 for 10 gundahs, 3 cowrees, not to belong to turuf Moora-reedhur, and to be the lakhiraj of the plaintiff respondent, Goonoseela; but his injunction to the collector to take a settlement from Goonoseela was superfluous. The collector will do what he thinks proper. Here it has been unnecessary to allude to another question raised before the lower court, that is, the right of occupancy of dagh 50, whether it lay with Goonoseela, or one Esan Chunder: this land (the balance of the purchased kanee) stands measured as lakhiraj, and the moonsiff's order affirming the possession of Goonoseela is necessarily upheld. The costs of appeal will be charged to the appellent.

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THE 27<sup>TH</sup> FEBRUARY 1851.

No. 319 of 1850.

*Appeal from a decree of Baboo Poornochunder, Moonsiff of Howlah,  
dated 15<sup>th</sup> June 1850.*

Kalee Sunker Chowdree, (Defendant,) Appellant,

*versus*

Futeh Ali, (Plaintiff,) Respondent.

THIS suit was instituted by Futeh Ali, respondent, to quash an irregular distraint made by Kalee Sunker Chowdree for alleged arrears of the year 1204: and that the moonsiff's order declaring the distraint illegal, was just, is abundantly evident from the course taken by Kalee Sunker Chowdree himself. Futeh Ali's suit was instituted on the 1st July 1848, and on the 2nd August following, Kalee Sunker Chowdree instituted a suit to *acquire* possession of the very land (10 g. 3 c.) on account of which, assuming himself to be already in possession, he had already distrained the property of a ryot. Kalee Sunker's own suit shows that his distraint was untenable. This means of enforcing the payment of an arrear is only open to those whose right and possession is established, not to those out of possession.

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THE 27TH FEBRUARY 1851.

No. 320 of 1850.

*Appeal from a decree of Baboo Poornochunder, Moonsiff of Howlah, dated 15th June.*

Kalee Sunker Chowdrec, (Plaintiff,) Appellant,

*versus*

Musst. Goonoseela and Futeh Ali, Respondents.

THIS appellant sued to recover 10 g. 3 c. of land as belonging to his turuf Moorareedhur Canoongoe, which was occupied by Futeh Ali as ryot, and over him by Musst. Goonoseela as proprietor of the land. The case as between Kalee Sunker and Goonoseela was fully entered into in the decree passed by me yesterday, and I have only now to affirm the decree of the moonsiff, dismissing the claim of Kalee Sunker Chowdrec. The appellant will pay the charges incurred by respondent in this appeal.

THE 27TH FEBRUARY 1851.

No. 306 of 1850.

*Appeal from a decree of Cazee Guda Hossein, Sudder Moonsiff, dated 12th June 1850.*

Mr. Samuel Moreino, (Defendant,) Appellant,

*versus*

Mahomed Kamil, (Plaintiff,) Respondent.

THIS suit was instituted to quash a summary decree for arrears of rent for the year 1208 on account of 5 kanees of land, the property of this appellant. Summarily, the arrears claimed by Mr. S. Moreino were decreed at the rate of rupees 2-8 a kanee. In his plaint, plaintiff alleged that the talook to which the 4 kanees belonged was held by him at a fixed jumma, and he sought to recover the excess levied over and above a rate of rupees 1-3-10 the kanee.

Before the moonsiff, the defendant, Mr. Moreino, gave no evidence at all; and the plaintiff failing to prove his fixed jumma, the moonsiff, following the statements made by the plaintiff's witnesses, assumed that rupees 1-8 was a fair rent for Mahomed Kamil to pay. Seeing that Mahomed Kamil did not appear to defend the summary suit, the appellant no doubt may say that the evidence adduced by his witnesses in that case was sufficient for the determination of the rent of 1208; and it is not altogether satisfactory to me to affirm the moonsiff's decree which reduced the rate from rupees 2-8 to 1-8; but it must be said that the regular suit prevails over the summary suit, and that as the appellant failed to support his claim here by evidence, though expressly called, I have no grounds to disturb the decree of the lower court. I dismiss the appeal, with costs.



THE 27TH FEBRUARY 1851.

No. 316 of 1850.

*Appeal from a decree of Moulvee Abdool Hossein, Moonsiff of Hathazaree, dated 13th June 1850.*

Bhyrub Chunder Ghose, (Defendant,) Appellant,

*versus*

Mahomed Mookeem and others, (Plaintiffs,) Respondents.

THE plaintiff instituted by the plaintiffs, the respondents, are untenable on the face of it. During the progress of the late revenue settlement, a settlement was taken from them, as they state, at rupees 5-6-2 per annum on account of k. 8-12-3 of land, they being under-tenants or itmam-dars of that land; and, afterwards, when the proceedings came before the additional collector, the settlement so taken was quashed; and they sue to affirm the settlement which the additional collector quashed.

The plaintiffs have mistaken the jurisdiction. The additional collector in revising the settlement proceedings of his subordinates, passed an order which he was fully competent to pass. The superior authority is quite competent to annul the proceedings of the subordinate deputy collector, and it is impossible for us to place the proceedings of the latter over those of his controlling superior.

Not only so; it is shown by the additional collector's order of the 3rd February 1846, that, owing to the temporary incapacity of the proprietor of the resumed land, of which the land held by these respondents forms a part, engagements were taken from the under-tenants, and that with a view to the definite settlement of the whole land by the proprietor, these preceding engagements were set aside. Plaintiffs (respondents) have not shown, and, from the papers before me, I cannot conceive how they should attempt to show that, in passing this order, the additional collector exceeded his authority.

In the plaint it is recited that, from of old, the rates of rent paid by the plaintiffs did not exceed 12 rupees a kanee: but to set forth a fixed jumma as distinguished from the settlement of the revenue authorities is not the object of the suit. I am not called upon now to say to what rent plaintiffs, respondents, are liable: but it is clear to me that the order of the moonsiff which affirmed the settlement of the 8 k. 12-3 at a rent of rupees 5-6-2 cannot stand. Whatever rights respondents have, they must take these as the grounds of their action, not the relative competency of the several grades of the revenue authorities.

The decree of the lower court is reversed, and the suit dismissed: all costs will be charged to the plaintiffs, respondents.

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THE 27TH FEBRUARY 1851.

No. 434 of 1850.

*Appeal from a decree of Moulvee Ferhatoolla, Moonsiff of Bhojpore,  
dated 20th August.*

Ruhmut Khan, (Defendant,) Appellant,

*versus*

Alif Khan, (Plaintiff,) Respondent.

PLAINTIFF alleging that he held no land under Ruhmut Khan, and that he owed him no rent, sued to recover 2 rupees which Ruhmut Khan compelled him to pay on the 24th Assar 1211. Ruhmut Khan answered that, on the 13th Assar 1197, plaintiff gave him a kubooleut for 15 gundahs of land at the annual rent of rupees 1-8; that even from 1187 he had held 5 gundahs; and that from 1197 he had regularly paid the rent stipulated.

The moonsiff has decreed the claim without investigating the defendant's plea. So late as the 19th August, the moonsiff called upon the defendant to serve a subpoena on the witnesses whom he had named, but next day, without regard to that order, without regard to the necessity of permitting a defendant as well as a plaintiff to prove his own case, the moonsiff referring only to a copy of the measurement chittahs in which 3 daghs were recorded as the property of Doorjetty and Doorga Kripa, assumes that this record of itself invalidates the defendant's plea. The mere mention in the chittah that Doorjetty and Doorga Kripa are the zemindars of the turuf to which the daghs belong, and that Alif Khan is the occupant, does not prove that these zemindars drew the rents of the land; far less does it prove that Alif Khan paid no rent for the land in question to Ruhmut Khan or that he gave him no kubooleut.

The suit must be remanded for full inquiry. The value of the appeal stamp will be re-paid.

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PRESENT: S. BOWRING, ESQ., OFFICIATING ADDITIONAL  
JUDGE.

THE 4TH FEBRUARY 1851.

No. 421 of 1850.

*Regular Appeal from a decision of Moulvee Abdool Jubbur, Moonsiff of  
Issapore, dated 10th June 1850.*

Hoolas Chunder, decree-holder, (Defendant,) Appellant,

*versus*

Becha Ghazee, (Plaintiff,) Futteh Ali, and others, (Defendants,) Respondents.

SUIT instituted 7th September 1849, to cancel the roobukarees, and sale of d. 1-3 of land.

The plaintiff stated that he purchased the above land, being part of talook Neela Ghazee in the zemindaree of Moulvee Busheeroollah, of the proprietors Husun Ali and Dewan Ali, on the 19th Phalgon 1203, for rupees 99; that he obtained possession and paid rent to the zemindar, but did not cause his name to be recorded as proprietor of the talook in the zemindar's register; that Hoolas Chunder caused the land to be attached and sold on the 6th August 1849, as the property of Husun Ali and Dewan Ali. Plaintiff objected at the time, but his petitions were rejected by the moonsiff and by the additional judge. The land was purchased by Futteh Ali, and plaintiff now sues to set aside the sale which was contrary to Construction No. 588, and Circular Order of 10th June 1842. Plaintiff has purchased other land of the same parties, but the deeds of sale being distinct and separate, he brings separate suits to reverse the sale of these other tenures.

Husun Ali defendant for himself and mother, Meer Banoo, corroborated plaintiff's statement.

Busheeroollah, the zemindar, stated that the land had not been sold to the plaintiff by Husun Ali and Dewan Ali.

Hoolas Chunder, the decree-holder, merely presented a petition, stating that this case had been already disposed of summarily.

The plaintiff rejoined that, at the auction; Futteh Ali had purchased the land benamee, for Husun Ali.

The moonsiff observed that possession of plaintiff from 1203 had been proved, and that no one had deposed that the kuballa had been written subsequently to the decree of Hoolas Chunder, which was dated the 4th December 1847 only; that some witnesses had said that the land was mortgaged, but that he could not credit the witnesses examined by Busheeroollah. The moonsiff referred to the other similar cases pending, and decreed for plaintiff.

Hoolas Chunder defendant appealed, stating that the only object of the suit was to defend the execution of the decree held by him, appellant; that Husun Ali had formerly filed a forged receipt for money received by appellant in full satisfaction of the decree, which was disallowed; that the land if sold would have been transferred to the name of plaintiff in the collector's and zemindar's offices; that the sale is benamee, for Husun Ali plaintiff being a poor man, is unable to purchase such talooks, and that the witnesses are not to be relied on.

#### JUDGMENT.

In this and the following cases, Nos. 422, 440, 447, 448 and 449, the circumstances are the same. Husun Ali and Dewan Ali (the last deceased) sold on various dates the several plots of land forming altogether the whole of their hereditary talook Neela Ghazee to the plaintiff, but neglected to cause his name to be recorded as proprietor of the tenure in the zemindar's serishta. The whole of the land was subsequently attached and sold in execution of a decree passed in favor of Hoolas Chunder, against Husun Ali and Dewan Ali. The petitions of summary appeal having been rejected plaintiff now sues to reverse the sale on the ground of his previous purchase. He has proved his kubalas by many witnesses, and there can be no doubt that these deeds were executed on the dates they bear. On behalf of the defendants and appellants it is argued that these deeds are fictitious; that no sale to plaintiff in reality took place, and that, consequently, the sale in execution of the decree, should stand good. It is usual in this district, in order to evade the usury laws when an estate is mortgaged, to execute a deed of absolute sale, on the understanding that the party shall cancel the deed by redeeming the mortgage. That this was the case in the present instance, is not from the evidence adduced, improbable, but there is no absolute proof.

The moonsiff proceeded himself to the spot, and where he found the plaintiff in actual possession under the kuballa, he decreed the case to him: whereas in one instance, that he had not been put in possession under the deed of sale, he disallowed the claim.

Under all the circumstances, I consider that the moonsiff has decided the cases on a correct principal, allowing the sale when possession under the deed was proved, and refusing to credit the imperfect evidence as to any understanding between plaintiff and Husun Ali, defendant. That the defendants disposed of their land with a view of defrauding their other creditors is possible, but there is no proof that plaintiff was a party to the fraud. I must dismiss the appeal.

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THE 4TH FEBRUARY 1851.

No. 422 of 1850.

*Regular Appeal from the decision of Moulvee Abdool Jubbur, Moonsiff of Issapore, dated 17th June 1850.*

Becha Ghazee, (Plaintiff,) Appellant,

*versus*

Hoolas Chunder and others, (Defendants,) Respondents.

SUIT instituted 7th September 1849, to reverse the sale and summary orders in regard to 4 k. 10 g. of land—46 rupees.

The circumstances of the case, reply of defendants, and evidence adduced were the same as in case No. 421. The kuballa was dated 5th Bhadoon 1208.

The moonsiff having proceeded to the spot and found the plaintiff not in possession, dismissed the suit.

The plaintiff appealed, asserting that the moonsiff was in error as to possession.

#### JUDGMENT.

More than a mere assertion is requisite to disallow the moonsiff's statement which is disputed in this case only. It is not probable that the moonsiff could be mistaken on such a point, and, as he adduced his reasons for considering plaintiff not in possession, I shall, on the grounds stated in the preceding case, No. 421, dismiss this appeal.

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THE 4TH FEBRUARY 1851.

No. 440 of 1850.

*Regular Appeal from the decision of Moulvee Abdool Jubbur, Moonsiff of Issapore, dated 18th June 1850.*

Hoolas Chunder, (Defendant,) Appellant,

*versus*

Becha Ghazee, (Plaintiff,) Futteh Ali, and others, (Defendants,) Respondents.

SUIT instituted 8th September 1849, to cancel the sale and summary orders relative to 7 kanees of land—94 rupees.

The circumstance, evidence and pleadings were the same in this as in the suit No. 421.

The moonsiff, finding the plaintiff in possession, decreed the case.

The defendant Hoolas Chunder appealed on the same grounds as before. For reasons stated in case No. 421, I dismiss the appeal.

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THE 4TH FEBRUARY 1851.

No. 447 of 1850.

*Regular Appeal from a decision of Moulvee Abdool Jubbur, Moonsiff of Issapore, dated 20th June 1850.*

Hoolas Chunder, (Defendant,) Appellant,

*versus*

Becha Ghazee, (Plaintiff,) Futteh Ali and others, (Defendants,) Respondents.

THE plaintiff sued on a kuballa, dated 11th Maugh 1204, under the circumstances detailed in case No. 421.

The moonsiff, finding him in possession, decreed the case.

For reasons stated in the case numbered as above, I dismiss the appeal.

THE 4TH FEBRUARY 1851.

No. 448 of 1850.

*Regular Appeal from a decision of the same Moonsiff, dated 20th June 1850.*

The same Appellants and Respondents.

SUIT brought under the same circumstances on a kuballa, dated 30th Assin 1205.

For reasons detailed in case No. 421, I dismiss the appeal.

THE 4TH FEBRUARY 1851.

No. 449 of 1850.

*Regular Appeal from a decision of the same Moonsiff, dated 20th June 1850.*

The same Appellant,

*versus*

Becha Ghazee, (Plaintiff,) Mahomed Morad, auction purchaser, and others, (Defendants,) Respondents.

SUIT brought under the same circumstances as the preceding case, on a kuballa, dated 30th Kartick 1203.

The moonsiff having found plaintiff in possession, decreed the case.

For reasons stated in case No. 421, I dismiss the appeal.

THE 4TH FEBRUARY 1851.

No. 429 of 1850.

*Regular Appeal from a decision of Moulvee Abdool Jubbur, Moonsiff of Issapore, dated 10th June 1850.*

Moulvee Busheeroollah, (Defendant,) Appellant,

*versus*

Becha Ghazee, (Plaintiff,) and others, (Defendants,) Respondents.

SUIT instituted 8th August 1848, to record the name of plaintiff as proprietor of a talook of 11 kanees, in the zemindar's scriшта,—8-12-1 rupees.

The plaintiff stated that he purchased the above land being kt. talook Neelaghazee, of the owners Husun Ali and Dewan Ali, in the zemindaree of defendant by kuballas, dated 19th Phalgun 1203, and 3rd Maugh 1207; that defendant having previously received rent from plaintiff, "marifutwar," refused to take it for 1209, or to record plaintiff's name as proprietor, though applied to.

Moulvee Mahomed Busheroollah replied that the transfer was a fraudulent one. That he, himself, and Hoolas Chunder had claims on Husun Ali, and were about to claim proceeds of sale of the talook sold by order of the court when the fraud was committed; that plaintiff could not have purchased the property, and that no such talook exists, as the whole estate, formerly lakhiraj, has been resumed and assessed.

Husun Ali corroborated plaintiff's statement.

The moonsiff referring to other cases, 421, &c., ordered the transfer of names.

Moulvee Busheeroollah appealed repeating his defence, and complaining that the moonsiff did not inquire into the means possessed by Becha Ghazee.

## JUDGMENT.

The kuballa for the sale of his talook has been, in case 421, pronounced good, and, consequently, plaintiff is entitled to have his name recorded as proprietor. If the talook exists no longer in consequence of the resumption, this may be the subject of a separate suit, but is not to be decided with this case. The name of Becha is merely ordered to be recorded in lieu of Husun Ali and Dewan Ali.

Much has been said of the poverty of Becha Ghazee, but no proof whatever has been adduced of it.

The appeal is dismissed.

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THE 4TH FEBRUARY 1851.

No. 433 of 1850.

*Regular Appeal from order of the same Moonsiff, dated 18th June 1850.*

Moulvee Busheeroollah, (Defendant,) Appellant,

*versus*

Becha Ghazec, (Plaintiff,) Jan Ali and others,  
(Defendants,) Respondents.

SUIT instituted 15th September 1848, to transfer a talook of 15 kanees of land hustobood, 23, 6, 6 and 7, 5, russoom, and to receive balance of rent for 1209, Company's rupees 15-6-6, total value, rupees 39-4-5.

The plaintiff claimed the transfer of the talook on the grounds detailed in case No. 429.

Moulvee Busheeroollah also filed a similar reply to that in the above named suit, and the moonsiff, for the same reasons, decreed for plaintiff, ordering him to pay up all arrears of rent.

The defendant appealed on grounds similar to those detailed in case No. 429.

#### JUDGMENT.

For reasons specified in case No. 429, I dismiss the appeal.

THE 5TH FEBRUARY 1851.

No. 406 of 1850.

*Regular Appeal from a decision of Mr. L. W. Hutchinson, Moonsiff of Putteeah, dated 11th June 1850.*

Moonshee Budderooddeen, (Plaintiff,) Appellant,

*versus*

Kumur Ali, Mahomed Sadiq and others, (Defendants,) Respondents.

SUIT instituted 30th March 1849, for possession of 17 g. 3 c. 1 k. of land being a tank—16 rupees.

The plaintiff stated that dagh 1695 in mouza Ghunsberra, turruf Brijkissore Canoongoe, had by an error of the Omla, been recorded as 15 g. of land, though in reality 17, 3, 1; that the dagh 1695 being a tank was measured as waste which it then was, but is now partly under cultivation; that rent was paid for the cultivated part by the ryots to the former talookdar, but that Kumur Ali, Casim Ali and other villagers, have destroyed the crops, and now offer opposition to the cultivation.

Kumur Ali and other ryots, defendants, corroborated the statement.

Kumur Ali, Casim Ali and Mahomed Sadiq claimed the tank as theirs, being daghs 1695, 1696 and 1697, k. 1 3, in the zemindaree



of Busheeroollah: they denied that rent had ever been paid for the tank.

The moonsiff considered that the survey chittas were incorrect; that they showed a part of the tank to be in turruf Brijkissore, and a part in turruf Ramdoolall Ramkissore; that the evidence showed plaintiff's predecessor in the talook to have had no right to the tank, and that plaintiff could therefore have none. He dismissed the suit.

The plaintiff appealed, repeating his assertions and urging objections to the ameen's report.

#### JUDGMENT.

The survey chittas show the tank to consist of 3 daghs, 1695, 1696 1697, of which the first, 1695, is in plaintiff's talook. There does not appear any error in the survey. That reported by the ameen is the mistake of plaintiff, who says the dagh is g. 17, 3, 1; whereas it is correctly recorded as 15 g. 3 c. The evidence of the witnesses merely proves that the use of the tank was common to all the villagers, and that some portion silted up had been cultivated. I must reverse the moonsiff's order, and, on authority of the survey, decree 15 g. 3 c. of land, a tank, dagh 1695, to the plaintiff as part of his talook; but this decree is not to warrant the filling up of the tank or to prevent the use of it by all who have been accustomed to frequent it.

All cost to be paid by respondents in proportion to the amount awarded.

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THE 15TH FEBRUARY 1851.

No. 539 of 1850.

*Regular Appeal from a decision of Moulvee Hadee Ali, Moonsiff of Rungunneeah, dated 8th August 1850.*

Sumbhoo Ram Muhajun, (Plaintiff,) Appellant;

*versus*

Wullee Khan and Gowul Chand, (Defendants,) Respondents.

SUIT instituted 30th December 1848, for recovery of 16 rupees, value of 6 maunds of cotton as per tumnusookh.

The plaintiff stated that he advanced 12 rupees to defendants, on the 6th Bhadoon 1199. Defendants engaged to deliver 16 maunds of cotton which they, having failed to do, plaintiff now sues for value, 16 rupees.

The defendant Wullee Khan replied that he had repaid the amount together with another debt of 10 rupees to plaintiff, who gave him a receipt for 30 rupees, and that the other defendant Gowul Chand is still indebted to him, Wullee Khan, 15 rupees on this account.

Gowul Chand did not appear.

The moonsiff dismissed the case, observing that plaintiff filed a list of witnesses to the tummusookh, and these parties, when examined, spoke to admissions by defendant.

The plaintiff appealed repeating his assertions.

#### JUDGMENT.

The bond is admitted. The only issue is whether the amount has been repaid.

The witnesses for plaintiff have not deposed to the fact, to prove which their names were given; but this may be an error, and there is no reason to doubt their testimony. On the other hand, the defence is not good; the receipt is open to great suspicion, and is in the name of one defendant only, for a sum admitted to have been received by two.

I will modify the moonsiff's order, and give the plaintiff the benefit of a nonsuit, leaving him to any farther remedy he may be entitled to.

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THE 15TH FEBRUARY 1851.

No. 633 of 1850.

*Regular Appeal from a decision of Moonshee Ameenooddeen, Moonsiff of Deeng, dated 19th September 1850.*

Mushruff Ali, (Defendant,) Appellant,

*versus*

Mushruff Ali, (Plaintiff,) and Ramdoolal, (Defendant,) Respondents.

Suit instituted 10th August 1849, for recovery of 12 rupees, disputed on account of rent, including damages.

The plaintiff stated that he held 2 k. 2 of land, at 3 rupees junma, in, etnam Mushruff Ali, talook Rumdoolal; that he paid rent to Mushruff Ali, until this person went to Calcutta, and then to Ramdoolal; that Mushruff Ali returned in 1209, and both defendants collected two years' rent from him, for 1209 and 1210.

Ramdoolal replied that the plaintiff was in arrears to him, and that he had never authorized Mushruff Ali to collect.

Mushruff Ali, defendant, replied that, before he left the village, he held a talook of d. 1-1-7-2, and on his return, Ramdoolal gave him k. 8-10-1, including the land held by plaintiff.

Bishtoo Preya, defendant, on her own petition, widow of the late zemindar, stated that Ramdoolal had a talook, but Mushruff Ali had no land in the zemindaree.

The moonsiff considered the suit collusive between the two persons named Mushruff Ali. He observed that plaintiff admitted previous payment of rent to Ramdoolal, and Mushruff Ali had shown no

proofs of any right to an etmam in the talook. He decreed for two years' rent against Mushruff Ali, 6 rupees, and damages, total 12 rupees.

The defendant Mushruff Ali appealed, repeating his assertions, and stating that when he left the village he gave up the etmam to Ramdolal and received it again on his return.

#### JUDGMENT.

Mushruff Ali has proved payment of rent to both defendants. Mushruff Ali defendant has not shown any right whatever to collect, as, however, the plaintiff paid Mushruff Ali, defendant, voluntarily, I will reduce the decree to 6 rupees, the sum actually paid, and costs with reference to that amount.

THE 18TH FEBRUARY 1851.

No. 542 of 1850.

*Regular Appeal from a decision of Moulvee Zeenutoollah, Moonsiff of Noaparah, dated 17th August 1850.*

Gopeenath Thakoor, (Defendant,) Appellant,

*versus*

Bindabun Thakoor and others, (Plaintiffs,) Respondents.

SUIT instituted 18th April 1850, for possession of 1 krant of land on the bank of a tank, and for keeping open a path 3-1-5 baus long and 1 broad on the west side of the same, 5 rupees.

The plaintiffs stated that there is a tank in front of their houses called Anuntram, and that they always had access by the bank of the tank to their dwellings, and have no other road; that the defendant obtained a decree for 1 g. 2 c. 5, and has purchased half the tank, and now encroaches on the road which, under the order of the court, is to be kept open.

The defendant replied that plaintiffs had formerly presented a similar petition, which had been rejected, and that the road is open, as directed by the court.

The moonsiff observed that the decree gave plaintiffs and the public a good path, and that the witnesses show the way to have been broad, and that tonjons and marriage processions passed by it. This the defendant's witnesses admit, but as the path is deposed to be only one-half or two haths broad now, such processions cannot pass at present. The reason for rejecting the plaintiffs' former petition was, that the decree did not declare the road to be more than two haths broad. He decreed for plaintiff, ordering defendants to restore the land encroached on, and make up the road to five haths in width.

The defendant appealed, repeating his assertions, and complaining that the moonsiff had said that he, defendant, had no right to the tank.

## JUDGMENT.

The suit arises out of a decree passed by the same moonsiff on the 14th April 1847, which directs, among other matters, that defendant shall keep the road open. The witnesses both for plaintiff and defendant admit that, formerly, marriage processions passed by the road, and now, in the state the road is described by both parties to be in, they cannot pass. The evidence of defendant's witnesses to the effect that he had not encroached, was, therefore, properly rejected by the the moonsiff. The rejection of the former summary petition does not prevent this suit being brought, which belongs properly to the execution of the decree of the 14th April 1847, the exact interpretation of which rests with the moonsiff, Moulvee Zeenutoollah, who passed it. He gave defendant no right to determine the proper width of the road, and now decides accordingly.

The right to the tank not being any part of the subject of this suit, any opinion expressed by the moonsiff on that point will be cancelled.

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THE 19TH FEBRUARY 1851.

No. 545 of 1850.

*Regular Appeal from the decision of Moonshee Mahomed Akbar,  
Moonsiff of Rawoan, dated 14th September 1850.*

Bakur Ali, Hyder Ali and others, (Defendants,) Appellants,

*versus*

Mahomed Ali, (Plaintiff,) Respondent.

Suit instituted 30th April 1850, for recovery of rupees 16, value of property illegally distrained, and damages 16, total 32.

The plaintiff stated that in talook Munnoo Pathan, turruf Anundeeram, mouza Abdoollahpore, the property of Hyder Ali and other defendants, he held no land whatever, nor ever had transaction with, or gave a kubooleut to them, being absent cutting bamboos in the jungle. The defendants using the name of Baker Ali, a man of no property whatever, distrained his cattle for an alleged balance of 16 rupees due for rent of 9 kanees of land for 1211. The property had been sold previous to plaintiff's return home; he was, therefore, unable to give security.

Bakur Ali did not appear.

Hyder Ali and the other defendants replied that they did not attach plaintiff's property. He might sue Bakur Ali if he had claims on him.

The moonsiff observed that it was a common practice for parties to distrain under another name to prevent the person thus illegally treated from recovering damages; the name used being that of a pauper, and that this was often done in concert with the sale com-

missioner. He thought it was so in this case, defendants having no claim on plaintiff, and decreed for the full amount, with costs.

The defendants appealed, repeating their answers. Bakur Ali complaining that he was ready with proofs which the moonsiff did not take, and all the defendants that the case had been pending less than six months.

### JUDGMENT.

It is to be regretted that the practice alluded to by the moonsiff notoriously exists in this district. To gratify malice, the property of an adversary is attached under the name of another, having no property whatever. This appears to have been the case in the present instance, as there was no claim on any account against the plaintiff. The only question is whether the defendants acted together in this case. They are closely connected by marriage and other relationship. All went together to attach the property, and must have been well aware that Bakur Ali, whose name was used, could not have this claim against plaintiff. To give damages against Bakur Ali, would be trifling with justice, as nothing could be recovered. I shall confirm the moonsiff's order against all the defendants, and dismiss the appeal.

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THE 19TH FEBRUARY 1851.

No. 634 of 1850.

*Regular Appeal from a decision of Moonshee Ameenooddeen, Moonsiff of Deeng, dated 26th September 1850.*

Asgur Ali, (Defendant,) Appellant,

*versus*

Ali Mahomed, (Plaintiff,) Respondent.

SUIT instituted 23rd February 1850, for recovery of 32 rupees, value of property illegally distrained, and cancellation of the sale commissioner's roeedad.

The plaintiff stated that, under defendant, he held no land, "bawut jot Hosein, Sadij Ali;" but that defendant distrained on him for 7 rupees, on account of rent for 1211, two cows of the above value, and sold the same.

The defendant replied that the balance was due by Hosein and Sadij Ali, connected with plaintiff by marriage; that plaintiff agreed to pay the amount for his relation, and advised defendant to distrain on him, which he did. He further stated that, at the sale, plaintiff had bought the distrained property himself.

The moonsiff observed that although plaintiff was not defendant's ryot, his goods had been distrained as such, and that there was no proof of his having been security. He valued the cows at 20 rupees, and decreed for that amount. The defendant appealed, repeating his assertions.

## JUDGMENT.

The defendant distrained on plaintiff as a ryot of his which he was not, and the attachment was, therefore, illegal. As plaintiff appeared to have been guilty of duplicity in the matter, I admitted the appeal, with a view of reducing damages to the actual value of the cows, if proof could have been adduced that plaintiff had purchased them at the sale by the commissioner. Appellant has given no proof of this circumstance though called on, and I, therefore, dismiss the appeal.

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THE 21ST FEBRUARY 1851.

No. 418 of 1850.

*Regular Appeal from a decision of Moulvee Abdool Jubbur, Moonsiff of Issapore, dated 15th June 1850.*

Sheik Mahomed, (Plaintiff,) Appellant,

*versus*

Mahomed Kamil Eda Gazee and others, (Defendants,) Respondents.

Suit instituted 17th April 1849, for possession of 1 krant, 15 talooka land, with mesne profits.

The plaintiff stated that the talook Mahomed Kamil was sold for arrears of revenue and purchased by Shansee, who again sold it to plaintiff; that Mahomed Kamil, the first proprietor of the talook, still holds 1 krant, 15 gundahs, being daghs 6525 and 6526, for possession of which plaintiff now sues.

Mahomed Kamil, defendant, denied that the land was in his former talook: it is in the talook of Gorachand.

Gorachand, defendant, on his own petition, claimed the land as daghs 6523 and 6524 part of his talook, and let to Mahomed Kamil as ryot.

The moonsiff observed that two ameens had surveyed the land, and that the case had then been referred to arbitration; that the sales had declared the land to be daghs 6523 and 6524, and the property, therefore, of defendant Gorachand. He disallowed plaintiff's objections to the arbitrators, and dismissed the suit.

The plaintiff appealed, declaring the land to be his, and stating the arbitrators had quarrelled with him, because he refused to pay " mihnutana."

## JUDGMENT.

The land having been declared by arbitrators to be daghs 6525 and 6524, the plaintiff was called on to prove any charge he might wish to make against the arbitrators. He called four witnesses. The two first examined stated that the mihnutana was demanded by the salis to pay a mohurir to take notes, the other two surmised it was for the arbitrators themselves, but there was no proof of the fact nor

was any amount named. It does not appear unreasonable that the arbitrators should call on the parties interested to find a mohurir, and in this case both parties were required by the salis to do so. I cannot consider that this demand shows gross corruption or partiality, and shall uphold the decision of the arbitrators, and dismiss the appeal.

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THE 21ST FEBRUARY 1851.

No. 555 of 1850.

*Regular Appeal from a decision of Moulvee Syed Jonab Ali, Moonsiff of Satkanneah, dated 24th August 1850.*

Mattheea and Ramgopal Hujam, (Defendants,) Appellants,

*versus*

Patan, fisherman, (Plaintiff,) Respondent.

Suit instituted 7th February 1850, to cancel a receipt for rupees 30, illegally obtained.

The plaintiff stated that on a former occasion, he sued the defendant Ramgopal for refusal of services as village hujam, and obtained a decree, on appeal, in the principal sudder ameen's court, with costs, amounting to 30 rupees; that returning home one night, he was set on by defendants and others, locked up in a house, and compelled to sign a receipt for 30 rupees, for which he received no consideration whatever.

The defendants replied that the receipt was given by plaintiff voluntarily on payment of the money.

The moonsiff observed that the defendants had pleaded that they had paid the money, and produced witnesses to show that a part of the money only was paid, and that plaintiff admitted having previously received the remainder; that the witnesses to the receipt are the persons who seized plaintiff; he noticed other discrepancies, and decreed the suit.

The defendants appealed, repeating their defence, and attempting to explain the discrepancies, in the evidence noticed by the moonsiff.

JUDGMENT.

The plaintiff has proved his case, and there seems no good reason to doubt the evidence produced by him. He complained at once at the thanna, and then brought this suit. The defence differs from the evidence produced by defendants, and their witnesses again differ from each other as to details. I must dismiss the appeal.

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THE 22ND FEBRUARY 1851.

No. 540 of 1850.

*Regular Appeal from a decision of Moulvee Abdool Jubbur, Moonsiff of Issapore, dated 9th August 1850.*

Huneefa Bebee, (Plaintiff,) Appellant,

*versus*

Jyechunder Chowdry and Arnoo Poorna, (Defendants,) Respondents.

SUIT instituted 24th December 1849, to release from attachment her property, and to cancel the summary proceedings of 19th May 1849, and judge's order of 12th July 1849, rupees 16-5.

The plaintiff stated that her property was attached under a decree held by Arnoo Poorna, against her husband, Tiff Ali; that she objected at the time, but that her witnesses not attending the court, her petition was rejected. She now sues to cancel the sale.

The defendants replied that the property belonged to Tiff Ali, and that the objection raised by plaintiff, had already been disposed of.

The plaintiff rejoined that the deed under which she claims is in the collector's office.

The moonsiff observed that the house had been repaired by Busheeroollah, Suffer Ali and Tiff Ali, and that plaintiff had given no proof that she had any right. Her witnesses do not speak to any deed, but that she lives in the house with her husband Tiff Ali. He released two-thirds, the property of Busheeroollah and Suffer Ali, and ordered sale of the remainder as the property of Tiff Ali.

The plaintiff appealed, claiming half the property, and complaining that the moonsiff did not allow her time to file her papers.

#### JUDGMENT.

The plaintiff has in appeal exhibited a hibbanamah giving her the property: it is dated 27th Aughun 1205, and registered 4th September 1844; therefore, of old date: it must necessarily be taken into consideration in disposing of this suit, which the moonsiff has not done.

The case is remanded on this point. Value of stamp to be refunded.



THE 22ND FEBRUARY 1851.

No. 557 of 1850.

*Regular Appeal from a decision of Moonshee Mahomed Akbar,  
Moonsiff of Rawoojan, dated 17th August 1850.*

Munnoo, (Defendant,) Appellant,

*versus*

Sanreea, (Plaintiff,) Respondent.

SUIT instituted 20th December 1849, for recovery of rupees 11, value, including damages, of property illegally sold.

The plaintiff stated that he had held some jumma ryuttee land, in the lakhiraj of Juggomohun, under Buksh Ali and Afzul Ali. This last dying, four heirs inherited his property. Two of these heirs sold their rights to plaintiff, and the zemindars also sold 2 k., 16, the old jumma ryuttee, on 20th Kartick 1205, to plaintiff. Munnoo, defendant, has only a right to 8 annas profit in the talook. A claim he had made for rent of another share was dismissed on the 23rd May 1845. He defendant, however, distrained for rupees 4, due on account of 1210, and 8 annas interest, and sold the property in the usual manner.

Munnoo, defendant, replied that he held 1 k., 1 g., 1 c., in the talook for which plaintiff and his father had always paid 4 rupees, till 1203; that he, defendant, suspended the demand for some years previous to 1211, and then distrained for rent of that year. The land has now been sold by the zemindars, and defendant holds the etmam under Dataram.

The moonsiff observed that the whole case showed that plaintiff held no land under defendant. The chulan of plaintiff's father was no proof against the son. He decreed accordingly.

The defendant appealed, repeating his answer.

## JUDGMENT.

The plaintiff has proved the distraint for rent alleged to be due for 1210, and the defendant admits that no rent had been paid for several years previously. His reply and the roeedad differ as to the year for which rent was due.

The several claims to the land, as stated by plaintiff and defendant, are unintelligible, and too complicated to be decided in this summary manner. The defendant suddenly renewed a demand which he had not made for years. He cannot be allowed to determine his own suit against plaintiff in this manner. I dismiss the appeal.

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## THE 22ND FEBRUARY 1851.

No. 564 of 1850

*Regular Appeal from a decision of Moonshee Mahomed Akbar, Moonsiff of Rawaojan, dated 26th August 1850.*

Kaloo Manjee, (Defendant,) Appellant,  
*versus*

Mahomed Tukkee, (Plaintiff,) Respondent.

SUIT instituted 9th November 1849, for recovery of 16 rupees.

The plaintiff stated that on the 27th Poos 1210, he, Kaloo Manjee, and Hossun Ali, defendants, agreed to trade in rice, giving 16 rupees each for the purpose; that plaintiff paid 16 rupees, and sent his son in the boat, but that defendants never accounted for the proceeds of the rice, besides this, plaintiff has had other transactions with defendants.

Hossein Ali defendant admitted the advance by plaintiff, differing as to the share of profits he was to receive.

Kaloo Manjee denied the debt, and stated that Hossein Ali defendant was plaintiff's son-in-law, and a boatman of his, defendant; that Hossein Ali had absconded, causing him, Kaloo, a loss of 45 rupees; that the suit is collusive, plaintiff having no property.

The moonsiff considered the case proved by witnesses and decreed accordingly.

The defendant Kaloo appealed, stating that plaintiff's witnesses had not deposed exactly to the purport of the plaint, and complaining that his, Kaloo's, witnesses had not been examined.

## JUDGMENT.

The moonsiff appears to have disposed of this case almost without investigation. The plaintiff's witnesses differ as to the share he was to receive of the proceeds, nor is it at all likely that such a transaction as is deposed to, would have taken place in this district without some written document. The plaintiff has not made out his case, although he may have other evidence, which, with whatever defendant may be able to prove, should be considered.

I remand the case. Value of stamp to be returned.

## THE 27TH FEBRUARY 1851.

No. 538 of 1850.

*Regular Appeal from a decision of Moulvee Syud Jonab Ali, Moonsiff of Satkanneeah, dated 20th August 1850.*

Mahomed Hossein Oocha, (Plaintiff,) Appellant,  
*versus*

Muddho Shumsher and Moonsheeah, and others,  
 (Defendants,) Respondents.

SUIT instituted 28th August 1849, for possession of 1 gundah, 2 cowrees of land, a road, and to remove a house and tengra; to

erase the name of Petan, and record plaintiff's in chitta of 2 gundahs of road; to annul the settlement and settle the same with plaintiff—2 rupees.

The plaintiffs stated that he with his two brothers inherited a talook of 4 k. 4 g. of land which they divided 24 years ago. In plaintiff's share, was a road which he always used, and which was measured as his, but that Petan his elder brother, caused his own name to be fraudulently inserted in the survey chitta. In 1202 M. S., the road was encroached on by plaintiff's brothers and a house built; arbitrators to settle the dispute were appointed three times, but without result, and plaintiff now sues.

Muddho and Moonshea defendants replied that the land was in Petan's (deceased's) share, and that the suit is barred under Section 14, Regulation III. of 1793.

Plaintiff rejoined that he was ejected in 1202 only.

The moonsiff dismissed the suit, observing that more than twelve years has elapsed since the cause of action arose.

The plaintiff appealed, repeating his assertions, and stating that the names in the chitta were changed in 1206, and that the land was settled with him.

#### JUDGMENT.

The moonsiff has disposed of this case too hastily. Unless plaintiff can prove that the names were changed in the chittas, these cannot be corrected, as they are dated more than twelve years back; but plaintiff had a right of way apparently within nine years of the institution of this suit, and has applied to the court on failure to settle the dispute by arbitration.

The case is remanded to the lower court.

Value of the stamp to be refunded.

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THE 27TH FEBRUARY 1851.

No. 558 of 1850.

*Regular Appeal from a decision of Moonshee Mahomed Akbur,  
Moonsiff of Rawaojan, dated 17th August 1850.*

Mobarik Ali, auction purchaser, (Defendant,) Appellant,

*versus*

Buksh Ali, (Plaintiff,) Koloo Chunder and others, (Defendants,) Respondents.

SUIT instituted 4th July 1849, to include 5 g. of land in turruf Mokeem Ali, and correct the chittas by transferring it to that turruf from turruf Ahmed Yasser—rupees 5-15-3.

The plaintiff stated that he had held, for several years, possession of turruf Mokeem Ali, first as mortgagee, and afterwards, from the 22nd Aughun 1205, as purchaser; that in the year 1159 M.

S., (1797,) 6, 7, 1, of land, of which that sued for being dagh 14976, forms part, were transferred from turruf Ahmed Yassen to turruf Mokeem Ali; the land was held under plaintiff by Chooa, and afterwards by his son Suffer Ali at 8 annas jumma; and although it forms part of k. 1, 4, which plaintiff, by decree, recovered from defendant, appellant, who is the auction purchaser of the turruf Ahmed Yassen, he, the defendant, has fraudulently included it in a taedad, he gave the collector, and endeavours still to encroach on plaintiff's land. Plaintiff has a right to 7 k., 19 g., 1 c., and has only 6 k., 18 g.

The defendants, Mobarik Ali and others, merely replied that plaintiff had already as much land as he was entitled to.

The moonsiff considered that the evidence showed the land to be in turruf Mokeem Ali, but measured a part of turruf Ahmed Yassen; that plaintiff is in possession, and no proof has been given that he has as much or more land than he was entitled to. He decreed accordingly.

The defendant Mobarik Ali appealed, repeating that plaintiff had no right, and states that he held a decree for the rent of the land in dispute.

#### JUDGMENT.

The land in dispute is dagh 14976, surveyed as barie of Koolub, mortgaged to plaintiff, in turruf Ahmed Yassen; and plaintiff has shown that rent was always paid to him by virtue of his purchase and mortgage of the turruf. On the 20th May 1850, the moonsiff held a proceeding under Section 10, Regulation XXVI. of 1814, and Act XV. of 1850, and ordered defendant to file his proofs; he failed to do so, and the case went against him. Beyond assertion, no defence has been made, and plaintiff has shown that he received rent for the land, and that it was surveyed as mortgaged to him; while, it is not even asserted that he was mortgagee of any other land, than that of turruf Mokeem Ali. Defendant has not shown that he has obtained a decree for rent as alleged, and as all the circumstances show the land to have long been part of turruf Mokeem Ali, I confirm the moonsiff's order, and dismiss the appeal.

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## ZILLAH CUTTACK.

PRESENT: M. S. GILMORE, Esq., JUDGE.

THE 19TH FEBRUARY 1851.

No. 14 of 1850.

*Appeal from a decision of TurraKaunth Bidia Sagur, Principal Sudder Ameen of Cuttack, dated 26th August 1850.*

Chowdree Damoodur Das, and Chowdree Kirtibas Das, for himself and as guardian of Das Ruttty Das and Hurry Kishen Das, his minor brothers, (Plaintiffs,) Appellants,

*versus*

Kirtibas Mungraj, and after his demise Khettry Bur Bhugwan Rhyut Singh, (Defendants,) Respondents.

CLAIM to strike off moquddummee mouza Bingarpore as an under-tenure from zemindarry pergunnah Kotdes, and to hold it as an independent estate, and pay the revenue assessed thereon, viz., rupees 719-12-3 $\frac{1}{2}$ , direct to Government. Suit laid at rupees 4,000.

The plaint sets forth that pergunnah Kotdes zemindarry, in which mouza Bingarpore is situated, was formerly the property of the rajahs of Orissa, who made the collections thereof khas or hustobood, and appropriated the same for their own individual expenses; and thence the estate derived its name Kotdes; that during the dynasty of the said rajahs, the plaintiff's ancestor, Gopal Das Bur Punda, acquired mouza Bingarpore, as bilmootur taukeean, on account of which he paid a small quit rent to the rajahs; but when the Moguls usurped possession of the country, their nazim assessed it and converted it into a moquddummee tenure, and left it, as before, in the possession of the plaintiff's ancestor, who paid the rent direct into the Government treasury; and after the country fell into the possession of the Mahrattas, he continued in like manner to pay his rent to them, and purchased lands from other villages which he annexed to, as well as gave away as dan and khyrat small parcels of land from the area of Bingarpore; that afterwards the soobadar on the part of the Mahratta Government, by *purwannah*, dated 15th Rujub 1271, directed Bulbudder Das, the plaintiff's grandfather, and his co-partners in the moquddummee, to pay the rent of the mouza to Azum Khan Bhoonsla, jemadar of sepoy, on account of his salary, instead of as formerly to the huzoor, and they

accordingly paid it to the said jemadar during his lifetime, and afterwards to his son Shahbaz Khan, until 1187, when in consequence of their complaining to the subadar of the oppression committed towards them by the last named individual, they were directed to pay the rent to the Amil of the pergunnah, and they first paid it to Treelochun Putnaik Amil, and afterwards to his son Narain Chotra, till 1207 U., when a quarrel took place between the said Narain Chotra, and the plaintiff's ancestors, and they discontinued to pay the rent of Bingarpore to him, and paid it along with the rent of several other moquddumme khureedah and moostajirry villages, to the subadar until 1210 U., and after the conquest of the country by the British arms, they paid the rent of 1211 and 1212, direct into the Government treasury; but, in 1213, Narain Chotra, who in some way or other had got possession of pergunnah Kotdes, under the title of zemindar, presented a petition to the collector agreeing to pay 1000 cahuns of cowrees, in excess of the jumma paid by Bhugwan Das, the plaintiff's father, on account of Bingarpore and the other mouzas, which the petition alleged were merely moostajirry mouzas, and the collector paying no attention to the remonstrances of Bhugwan Das, who represented that Bingarpore was his mouroosee moquddumme tenure, annexed it with the other moquddumme and other villages to pergunnah Kotdes, and recorded in his proceedings, that if Bhugwan Das considered himself entitled to engage for the mouza as an independent moquddumme tenure, he could prefer his claim thereto at the permanent or detailed settlement (kamil bundobust) which was to take place in 1222 U.; and Bhugwan Das awaiting the arrival of that period, paid the rent of Bingarpore, to Narain Chotra, and relinquished possession of all the other mouzas. That, in 1233, Bhugwan Das died, and the plaintiffs awaiting the occasion of a detailed settlement to procure the separation of the mouza from Kotdes, paid the rent to Ketrabas Mungraj; and when the estate of Kotdes was settled under Regulation VII. of 1822, they preferred their claim for separation and established it to the satisfaction of the settlement deputy collector and the collector; but on Ketrabas Mungraj's appealing against the proceedings of these authorities to the commissioner, he confirmed their moquddumme title; but stated that their right to engage for it as an independent estate, was not established, and that to procure the separation of the mouza from the parent estate, recourse must be had to proceedings in the civil court, and in conformity therewith the present suit was instituted.

The defendant in a confused and in many parts unintelligibly written answer, not only denies the right of the plaintiff to hold mouza Bingarpore as an independent estate paying revenue direct to Government, but denies that they possess any moquddumme title whatever on the mouza, and maintains that it always formed

an intregal part of the ryuttee portion of the Kotdes estate, and has never been separately engaged for. He likewise contends that if as stated by the plaintiffs, their ancestors originally acquired the mouzas as bilmootur taukeean, and subsequently as a moquddum-mee tenure, they would have produced the sunnuds under which they held it as such; and he denies that the plaintiff's ancestors ever gave away any land from the ruqba of the mouza since 1192 U., when his ancestors obtained the grant of the zemindarry; and contends generally that as the Mahratta Government, which was despotic and tyrannical, conferred the entire estate, Kotdes, on his ancestors, it matters not what rights any other persons might previously have possessed therein, as they were all cancelled by the said grant; and whereas the plaintiffs were unable to produce a single document to prove that the mouza was a moquddummee tenure. In Mr. Collector Græme's roobukarry of the 7th October 1805, their ancestors were styled moostajirs, &c.

The principal sudder ameen held that the provisions of Rule XI. of the Proclamation embodied in Regulation XII. of 1805, which was issued by the commissioners appointed by Government to settle the land revenue of the province of Cuttack, and which declared that "in all cases in which the revenue of a village had for upwards of five years past, been paid direct to Government by the hereditary moquddum, the settlement of such village should be made with the hereditary moquddum," should alone guide the decision of the question at issue; viz., whether the plaintiffs were entitled to engage direct with Government for the payment of the revenue of mouza Bingarpore, as an independent property, or not? and although he recorded his opinion that the plaintiff's possessed a mouroosee moquddummee title in the mouza, and had paid the revenue thereof direct into the Government treasury from 1208 to 1212 U., it was not proved that they had paid the revenue direct to Government for upwards of five years prior to the 15th September 1804, the date of the proclamation before alluded to; but, on the contrary, the plaintiffs admitted in their petition of plaint, that they paid the rent of the mouza till 1207, through the zemindars, and he, accordingly, dismissed their claim.

Against the above decision, the plaintiffs have appealed, pleading, primarily, that the provisions of Regulation XII. of 1805, and Rule IX. of the Proclamation of the 15th September 1804 therein embodied, were not the solè laws by which the justness of their claim should be tested; but that all other laws and regulations promulgated for the trial of civil suits in the provinces of Bengal and Orissa were applicable, and that, more especially, according to Clauses 3 and 4, Section 5, Regulation VIII. of 1793, their claim to separation had been established.

2ndly. That the principal sudder ameen had misquoted the contents of their petition of plaint, in stating that they had therein



recorded that they had paid the rent of the mouza to the zemindar until 1207; for they therein represented that they paid it to the wahdadar, which title the principal sudder ameen had confounded with, and considered synonymous with zemindar.

3rdly. That it was clearly proved by the documentary and oral evidence adduced by them, that they had paid the rent of the mouza direct to Government from 1208 to 1212, and long previous thereto; and the principal sudder ameen had recorded his opinion that it was proved they paid the rent from 1208 to 1212; and from the 18th Shraban 1207, the date of the perwannah according to which the rent ceased to be collected by the wahdadar, to the date of Mr. Collector Græme's roobukarry of the 7th October 1805, was five years, ten months, twenty-three days; notwithstanding which the principal sudder ameen dismissed their claim because they had not paid the rent direct to Government for five years previous to the 15th September 1804.

The respondent, in reply, reiterated the pleas advanced by them before the lower court.

#### JUDGMENT.

After a full and careful consideration of the pleas and objections advanced by either party to this action, I am of opinion that Regulation XII. of 1805 is after all, the principal Regulation by which the decision of the court must be guided; for in Rule IX. of the Proclamation of the 15th September 1804, issued by the commissioners appointed to settle the land revenue of the province of Cuttack therein embodied, it is laid down "that in all cases where the revenue of a village has for upwards of five years past, been paid direct to Government by the hereditary moquddum, the settlement of such village shall be made with the hereditary moquddum," thereby clearly indicating, as is really the case; that there were other moquddums who paid their revenue through the zemindars, who were not entitled to a separate settlement, and by Section 5, Regulation XIV. of 1805, it is specially provided, that no suits, the cause of action in which shall have originated 12 years antedecent to the 14th day of October 1803, shall be entertained; and by the following section the courts are restricted from taking any cognizance whatever of any civil suit originating in the acts or engagements of the officers of the Mahratta Government in their official capacity, and of which, according to the usages of that Government, cognizance would not have been allowed to be taken by their judicial authorities; and, lastly, by Section 7 of the same Regulation, it is provided that after the expiration of 12 years from the date of the conquest of the province, viz., the 14th October 1803, that the courts are not competent to entertain any suit whatever in which the cause of action shall have arisen previous to that date; consequently, the question for decision is not whether during the dynasty

of the Rajahs of Orissa, or the Mahomedan Government, the appellant's ancestors acquired the mouza in dispute as bilmoottur taukeean, or a moquddummee tenure, or whether the Mahratta Government illegally dispossessed them or not, but whether towards the close of the Mahratta Government, or according to Rule IX. of the Proclamation above referred to, they were in possession of mouza Bingarpore as their hereditary moquddummee tenure, and paid the rent thereof direct to Government, as an independant property, for upwards of five years; and with reference to these points, I do not for the following reasons consider that the appellants have established their claim:

*First.*—The appellants admit that from 1187 to 1207, their ancestors paid the rent of mouza to Trelochun Putnaik, and after him, to his son Narain Chotra, who, they allege, held the office of amil or wahdadar on the part of the Mahratta Government till 1207 U., and state that they afterwards, of their own authority, discontinued paying it to the amil, and paid it along with the rents of 12 other mouzas, moquddummee, khurreedah, and moostajirry, to the soobadar; but they have not adduced a single document to show that, prior to the cession of the province to the present Government, either Narain Chotra or his father held the office of amil or wahdadar; whereas, on the other hand, the respondent has filed a sunnud, bearing date 26th Rubi Alawal 1192, said to have been executed by Maharajah Rughoojee Bhoonsla, assigning over the Kotdes zemindarry to his ancestor Trelochun Putnaik, in the name of his son Narain Chotra; and although the appellants allege that this document is a forgery, it is evident that Narain Chotra was zemindar, and not merely amil on the part of the Mahratta Government, as stated by the appellant; otherwise he would not have admitted to engage as zemindar by the present Government in 1211; and when Narain Chotra applied in 1213 to the collector to be allowed to engage for the mouza in dispute, together with other so called moquddummee, khurreedah, and moostajirry mouzas then in possession of the appellant's ancestors, they would have protested against his right to engage as zemindar; but instead of doing so, they, themselves, in their petition to the collector, admitted that they formerly paid rent to the zemindar. I am, therefore, of opinion, nothing being proved to the contrary; that Narain Chotra and his father were zemindars since 1192, or 18 years prior to the conquest of the country by the British arms, and that the appellant's ancestors paid their rent through them to the Mahratta Government.

*Second.*—Although the appellants paid their rent from 1208 to 1212, both years inclusive, being a period of five years direct to Government, that does not bring the mouza under the operation of Rule IX. of the Proclamation of the 15th September 1804, corresponding with the 2nd Assin 1211 above referred to; the period in-

tervening, either the 18th Srabun 1207, corresponding with the 15th January 1800, the date of a perwannah exhibit No. 21 filed by the appellants, which is said to have been issued by the soobadar directing the ryots to pay rent of the disputed village to the moquddums, (though it bears a very suspicious appearance,) or the beginning of 1208 U., and the said 15th September 1804, being less than five years, and the fact of the appellants having paid the rent of mouza Bingarpore, together with that of the 12 other villages before referred to direct to Government from 1208, is accounted for by Narain Chotra's having, as stated by the respondent, absconded or absented himself, in consequence of the disturbed state of the country, and his having been unable to pay the Government revenue.

*Third.*—Although it has been ruled by the Sudder Dewanny Adawlut, that the entertainment of the appellant's claim was not barred by the statute of limitation, in consequence of their having failed to institute proceeding to set aside the order of the collector of the 7th October 1805, until the 26th August 1842, because no permanent or detailed settlement had taken place in accordance with the 6th rule of the Proclamation before referred to, and the collector in his said order had recorded that their claim should be investigated at the time of such settlement, I am of opinion that the fact of the appellants having so long delayed to institute proceedings in the civil court to establish their title to the mouza, when they found that the settlement referred to was, from time to time, postponed, throws very great doubts on their claim.

*Fourth.*—With the exception of the perwannah of the 18th Srabun 1207 above referred to, the validity of which is questionable, the perwannah of the 15th Shahr rujub 1171, purporting to have been addressed by the soobadar of the Mahratta Government to the moquddums of the mouza Bingarpore, directing them to pay the rent of the village to Asum Khan Bhoonsla jemadar, as his moshaira, instead of as formerly to the huzoor, is the only document filed by the appellants of a date prior to the cession of the province to the British Government, from which any acknowledgment of the appellant's claim on the part of the ruling power, can be said to be traceable; and admitting it to be a genuine document, though the respondent has raised doubts respecting it, I do not think that it affords indisputable proof that the mouza ever was a moquddumnee, of the description alleged by the appellants; for the zemindarry pergunnah Kotdes was, as the name implies, the khas property of the Mahratta hakims, set apart by them for their own individual expenses, and consequently the proprietors were zemindars as well as hakims; and the fact of the said perwannah having directed that the rent which was formerly paid to the huzoor was to be paid by the moquddums to the jemadar of the sepoys as his moshaira, affords no proof that the mouza was an independent

moquddummee tenure, paying revenue direct to Government, and not through the zemindars ; but the fact of the hakims or zemindars directing the moquddum to pay their rent to the jemadar, in my opinion, shows that they did not possess an independent right in the mouza ; for the order in question was manifestly an encroachment on any such right, and naturally rendered them liable to acts of extortion and oppression on the part of a second party, as the appellants, in their petition of plaint, represent it actually did, and caused them after paying the rent to the jemadar till 1187, to apply to be allowed to pay it to the amil.

*Fifth.*—With regard to the other documents filed by the appellants, viz., the kubalas, dated the 25th Suffr 1150, executed on a talputro, according to which one of the appellant's ancestors is represented to have purchased 6 beegals 13 goonths of land in mouza Nuchepore and annexed it to Bingarpore, as well as the kubalas dated 1177, 1180, and 1185, purporting to have been executed in favor of the appellant's ancestor Bulbudder Das, on account of different portions of mouza Bingarpore by the other shareholders, who were relations of the said Bulbudder Das, there is no occasion to express an opinion. With reference to the limitation prescribed by Sections 5, 6 and 7, of Regulation XIV. of 1805, for the cognizance of civil suits ; and as respects the assertion of the appellants, that they alienated small parcels of land in the mouza in dispute, in 1195 and 1209, in support of which they have only filed *copies* of sunnuds, they are both dated subsequent to respondent's zemindarry sunnud, and the period since which the appellants admit they paid rent of the disputed mouza to the respondent's ancestors ; and, if they are genuine, they afford no proof of the appellant's right to separation, as shikmecs moquddums and even moostajirs in the time of the Mahrattas made like alienations.

*Lastly.*—With a reference to the particulars above detailed, and more especially with reference to Rule IX. of the Proclamation of the 15th September 1804, relating to the settlements of the tenures of Cuttack, I am of opinion that the provisions of Regulation VIII. of 1793 cannot affect the decision of the particular case under consideration, however much it may be applicable to moquddummee tenures in general, as the appellants have filed no sunnud to show on what conditions they required (as alleged by them) the moquddummec tenure. It is, therefore, ordered that the appeal be dismissed, and that the principal sudder ameen's order rejecting the appellant's claim to be permitted to engage for the Government revenue of mouza Bingarpore, as an independent moquddummee tenure be affirmed ; but with reference to the respondent's objection to the principal sudder ameen having recorded his opinion that the mouza was proved to be the mouroosee moquddummee property of the appellants, it is hereby provided that his having done so, will prove no obstacle to the respondent instituting pro-

ceedings in due form to contest the correctness or otherwise of the proceedings of the revenue authorities, should he think fit to do so. It is further ordered that, as the respondent appeared unsummoned, both parties will pay their own costs in appeal.

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THE 21ST FEBRUARY 1851.

No. 70 of 1850.

*Appeal from a decision of Shibpershad Singh, Moonsiff of Cuttack, dated 28th August 1850.*

Bimbalee Bewa, mother and guardian of Cassy Teharry,  
(Defendant,) Appellant,

*versus*

Suddai Teharry and Madhooee Teharry, (Plaintiffs,) Respondents.

THIS suit was instituted to procure the cancelment of the deputy collector's order of the 13th March 1848, decreeing rupees 1-8-0, under Regulation V. of 1812, against the plaintiff in favor of the defendant, on account of the rent (inclusive of expenses) of 2 goonths 7 biswas of land, belonging to the duddee bawun thakoor and in the occupation of the plaintiffs, on the ground that they were joint shewaits of the thakoor with the defendant, and shared the sidha or victuals which was granted for the thakoor from the arno chuttr bequest.

The defendant replied that the land was acquired by her husband's father Jugoo Teharry, and was not patrimonial property, and that the plaintiffs had no right to a share in either the dewutter land or the *sidha* of the thakoor, was apparent from the settlement records, and the commissioner's roobukarry of the 6th September 1849; but their houses being situated on the said land, they paid rent at the rate of 8 cahuns, 7 puns of cowrees, being equivalent to rupees 1-4 annually, which was appropriated for the support of the thakoor, and on account of which they executed a kubooleut which she had filed in the Regulation V. suit, instituted by her for the rent of 1254 Umlee.

The moonsiff held that the plaintiff's objection to pay rent was inadmissible; but as the defendant had failed to adduce proof that the proper rent was rupees 1-4, he ruled that according to the jumma assessed on the total quantity of land appertaining to the thakoor, the portion occupied by the plaintiffs, which according to the measurement papers filed by them is 6 goonths, 12 biswas, was 2 annas and 6 pie; and decreed accordingly in amendment of the deputy collector's order of the 13th March 1848.

Against the above decision the defendant appeals, stating that the rent of the land was clearly shown by the plaintiffs' kubooleut, the deputy collector's roobukarry, and the evidence of her witnesses, to be rupees 1-4-0; and that, if the moonsiff entertained doubts

on the subject, he should have deputed an ameen to hold local inquiry regarding it.

### JUDGMENT.

Since the plaintiffs sued to set aside the order of the revenue authorities of the 13th March 1848, decreeing under Regulation V. of 1812, rupces 1-8, on account of the rent (inclusive of costs) of 2 goonths, 7 biswas of dewutter land belonging to the duddee bawun thakoor, in the occupation of the plaintiff, in favor of the defendant, on the grounds that they were joint shareholders with the defendant of the land in question, and the defendant denied that they had any right in it, and stated that they had executed a kubooleut for the rent of the portion of the land occupied by them, the question for decision was, simply, whether the plaintiff was joint proprietors with the defendant or not, and in the event of their being so, the moonsiff should have cancelled the order of the deputy collector; but if such did not appear to be the case, he should have dismissed their claim without interfering with the said order, as the plaintiffs did not plead that the rent claimed was excessive. However, instead of doing this, the moonsiff without expressing any opinion as to whether the plaintiffs were joint proprietors with the defendant or not, and without holding any local inquiry to ascertain whether the rent claimed by the defendant was correct or not, regulated the rent according to his own judgment. It is, therefore, ordered that his decision be reversed, and that the case be returned to him with orders to re-investigate it, and to pass a proper decision thereon, with reference to the foregoing remarks. The value of the stamp of appeal will be refunded.

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THE 21ST FEBRUARY 1851.

No. 69 of 1850.

*Appeal from a decision of Moonshee Gurriboollah, Moonsiff of Balasore, dated 5th September 1850.*

Guddadhur Das Mahapater, (Plaintiff,) Appellant,

*versus*

Bulbudder Misser Surburakar, (Defendant,) and Rajkishen Dey,  
(Mozahim,) Respondent.

CLAIM rupees 15-6-6, balance with interest of the 12 puns kist of the rent of 1257 of mouza Nultaparah, forming part of talook Bennahar.

The plaintiff stated, that the 12 puns kist of the rent of mouza Nultaparah amounted to rupees 164-6-6; but that the defendant Bulbudder Misser had only paid rupees 149, and he consequently sued him for the remainder.

Bulbuddur Misser, defendant, admitted that he was indebted in the sum of rupees 15, to the plaintiff, and stated that he had paid him rupees 12-8, since the filing of the plaint, and had been allowed one month to pay the balance of rupees 2-8, the correctness of which was certified by the plaintiff's vakeel.

Rajkishen Dey, the mozahim, filed a petition setting forth that the case had been got up by the defendant, to deprive him of the rent due from mouza Nultaparah, the zemindarry right in which he and certain others had purchased at a public sale, held by the collector on the 10th January 1850, under Regulation VIII. of 1831, from which date they were entitled to receive the rent, &c.

The moonsiff held that the mozahim was entitled to the rent from the date of his purchase, and as it appeared from the collectorate kistbundee, that dustucks had only been issued on account of the second and third puns kists up to the said date, he dismissed the claim, and recorded his opinion that the suit had been instituted by the plaintiff in collusion with the defendant.

Against the above decision the plaintiff appeals, urging that the moonsiff's decision was based on the kistbundee arrangement for the payment of the Government revenue, and that the zemindars collected their rents in advance from their under tenants, so as to enable them to pay their revenue to Government, according to an arrangement sanctioned by the commissioner; and he produced before this court a kistbundee statement according to which he alleged that the 12 puns kist was payable to the plaintiff at the date of the sale, and which he stated he was prevented by illness from filing in the lower court.

#### JUDGMENT.

Although the document filed by the mozahim only showed that dustucks for the 2 puns and 3 kists had been issued from the collectorate, instead of the number of kists which were demandable, up to the date of the sale, viz., the 28th Poos 1257; it is well known that the 12 puns kist of the Government revenue is not demandable till the end of Bysakh, corresponding with the month of May; and from the kistbundee statement filed by the appellant, it is quite clear that according to the mofussil arrangement, only 8 puns were demandable from the ryots up to the time of the sale; and it is evident that as stated by the mozahim; that defendant has either caused a fictitious suit to be instituted against himself, or that the plaintiff and defendant have colluded together and instituted it to deprive the mozahim, the purchaser of the property of his rent. It is, therefore, ordered, that the appeal be dismissed, and the decision of the moonsiff confirmed, without serving notice on the respondent.

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THE 21ST FEBRUARY 1851.

No. 71 of 1850.

*Appeal from a decision of Moheshchunder Roy, Moonsiff of Dhamnuggur, dated 23rd September 1850.*

Dai Sahoo, (Plaintiff,) Appellant,

*versus*

Urjoon Jenna, Joodeshtee Jenna, Muddun Jenna and Broond Jenna,  
(Defendants,) Respondents.

CLAIM rupees 115-7-2, principal and interest of a tumussookh, dated 7th Bechar (Aughun) 1254 Umlee.

The plaintiff stated that the defendants conjointly borrowed from him the sum of rupees 83-11-0, out of which they liquidated a debt of rupees 35 to Guddadhur Punda, and took the remainder to trade with at Singbhooee, and promised to repay the loan in the month of Maugh 1255.

Urjoon Jenna denied all knowledge of the transaction, and stated that as he and his brothers lived together, the bond, had it been genuine, would according to the custom of the Hindoos, have been executed in his name alone, as the eldest of the family; he also denied going to Singbhooee at the time alleged by the plaintiff, or paying Guddadhur Punda rupees 35; and stated that rupees 42 was the sum he was indebted to Guddadhur Punda, and that he borrowed money from Oochubanund Putnaik to pay it, and that the plaintiff had instituted a false claim against him, in consequence of a dispute existing between them about the hire of some bullocks, for which he, the defendant, was about to sue the plaintiff.

Joodeshtee Jenna and Muddun Jenna filed an answer to the same effect as the above, and Broond Jenna did not enter appearance.

Although two witnesses whose names are attached to the bond, and two hazir mujlis witnesses deposed to the fact of the defendants having borrowed money and executed a bond in favor of the plaintiff, the moonsiff held that the plaintiff's claim was not satisfactorily established; because one of the said witnesses to the bond denied either having attested it, or seen the defendants get the money, and neither of them could identify the bond filed in court; and the plaintiff had adopted no measures for upwards of a month to cause the attendance of the two remaining witnesses against whom subpœnas had been three times issued; and inferring from this last circumstance that the plaintiff was aware that the witnesses would not give evidence in his behalf, he dismissed the claim.

The plaintiff, in appeal, contended that although one of the two witnesses to the bond stated that he had not attested it, and neither of them could not identify it, both they and the hazir mujlis witnesses had deposed that they were present at the time the money was borrowed, and proved his claim; and as he had been guilty of



no neglect in causing the attendance of the other witnesses to the bond, he prayed that the case might be remanded for re-investigation.

### JUDGMENT.

Since there are four witnesses to the bond, and the plaintiff only caused the attendance of two, one of whom denied having attested the bond, though he stated he was present at the time the plaintiff and defendants were engaged in the execution of it, and the plaintiff was unable to serve subpoenas on the other two witnesses, and adopted no means to cause their attendance after they were reported not forthcoming on the 27th July, I neither consider the plaintiff's claim established, nor do I see cause for interfering with the moonsiff's decision, which is hereby affirmed, and the appeal dismissed, without serving notice on the respondents.

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## ZILLAH DINAGEPORE.

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PRESENT: JAMES GRANT, Esq., JUDGE.

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THE 14TH FEBRUARY 1851.

No. 126 of 1849.

*Appeal from a decision of Moulvee Mahataboodeen, Moonsiff of Kulleagunge, dated the 9th April 1849.*

Palanoo Haree, (Defendant,) Appellant,

*versus*

Gourypershad, (Plaintiff,) Respondent.

CLAIM rupees 54-8, due on a bond for rupees 39, dated the 7th Assin 1251. The plaintiff states that there was an old balance of rupees 31, and an advance of rupees 8, making in all rupees 39, as per bond.

The defendant denies the authenticity of the bond, and pleads enmity on the part of the plaintiff in consequence of information given by him, the defendant, as chowkeedar, of the plaintiff's having a young girl in his house, also the improbability of advance of cash having been made when an old balance was due.

The moonsiff decreed the case on the evidence of three witnesses to the bond, and two as to demand of payment.

The plaintiff denies that information was given at the thana regarding the girl Joomarwolly, but there evidently was some foundation for the story. The particulars of the former bond and balance are not given, or the cause of so large a sum having been lent to the chowkeedar of the plaintiff's village. The stamp was purchased for the use of another person a resident of another village. Under these circumstances, I reverse the moonsiff's decision, and decree the appeal, with costs.

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THE 15TH FEBRUARY 1851.

• No. 318 of 1849.

*Appeal from a decision of Syud Khadem Hossein, dated the 28th August 1849.*

Koranoo and others, (Defendants,) Appellants,

*versus*

Jonakoo, (Plaintiff,) Respondent.

CLAIM rupees 26-6, due on a bond for rupees 23-12, dated the 17th Assin 1255.

Koranoo states that he alone gave a bond for rupees 13-12 to plaintiff, who gave only 5 rupees, and said he would advance the remainder next day, but afterwards said he would give back the bond on receiving the 5 rupees. Koranoo further states that he paid 3 rupees. The plaintiff, in his reply, states that there was an old balance of rupees 18-12 against Koranoo, who got a further advance of 5 rupees, and gave his bond for the aggregate 23-12, adding the names of his brothers, who were not present, to his own on the bond. The moonsiff decreed the case against Koranoo only, but all the defendants have appealed.

The moonsiff states that the evidence is all in favor of the plaintiff; but it appears from only two of four witnesses to the bond, that the bond was for rupees 23-12, the third declaring it was for rupees 13-12, the fourth not being able to say what the amount was. In addition to this, there is in the plaintiff's favor the evidence of his putwaree, the writer of the bond named as such, and produced the day before the case was decided. The moonsiff apparently took no evidence for the defendant, and I do not consider it necessary with reference to the circumstances abovementioned; and there being no mention in the bond or plaint of any old balance, I accordingly reverse the moonsiff's decision, and decree the appeal, with costs.

## ZILLAH HOOGHLY.

PRESENT : F. CARDEW, ESQ., JUDGE.

THE 5TH FEBRUARY 1851.

Case No. 4 of 1849.

*Regular Appeal from a decision passed by the late Principal Sudder Ameen of Hooghly, Mr. James Reily, dated 19th December 1848.*

Sreeram Koowur, (Plaintiff,) Appellant,

*versus*

Lukhee Munce Dibya, Goluknath Dhawa and others, (Defendants,) Respondents.

THIS suit was instituted on the 17th July 1845, to recover possession, and mesne profits, of two mango trees, named Chotudhooma and Puran Kolya, situated in mouza Kolura, pergunnah Paouan; value under a duplicate plaint, Company's rupees 1243-12-10-2-2.

The plaintiff stated that the late putnee talookdar of lot Kolura, leased the two trees to him at a jumma of 5 rupees a year, under a pottah, dated the 12th Assar 1245 B. S., and he had possession; that the pottah was confirmed by the zemindar, on the 6th Chyete 1250, on his obtaining immediate possession of the talook at a sale held under Regulation VIII. of 1819; that, in 1251, the putnee tenure of lot Kolura was purchased by the defendant Huree Singh Race, in the name of the defendant Lukhee Munce Dibya, who forcibly dispossessed him (plaintiff) of the trees, on the 20th Chyete of that year, and afterwards attached and sold the mango fruit, under Regulation V. of 1812, in collusion with the defendants Goluknath Dhawa and Khetronath Dhawa, who were set up as ryots.

The defendant Goluknath Dhawa, in answer, pleaded that the trees had been leased to him by the former zemindar, Bisumbhur Haldar, under a pottah, dated the 2nd Bysakh 1221 B. S., at a jumma of rupees 10-8, and that he had had uninterrupted possession ever since.

The defendant Lukhee Munce Dibya, in answer, pleaded that she held the talook in her own right; that the disputed trees were khas khamar, belonging to the private lands of the zemindarry, and she had proceeded against Goluknath Dhawa under Regulation V. of 1812, under a mistake, for he never had possession; that

the plaintiff was the korpurdaz, or manager on the part of the late putneedar, Gunga Purshad Ghose, and the claim had been falsely got up by him in order to retain possession of the trees.

The principal sudder ameen dismissed the suit recording his decision as follows :

“ Were the two mango trees let to plaintiff, and do any considerations exist against the defendants taking possession of them ?

“ Plaintiff has filed a pottah, dated the 12th Assar 1244, but it cannot be upheld for the following reasons :

“ 1st. The writer has not been examined. Indeed plaintiff’s witnesses not plaintiff himself say who wrote the pottah.

“ 2nd. Plaintiff has examined two witnesses, Haro Haldar and Basutullah. Haro Haldar cannot read or write; he speaks of the pottah only having been executed. Basutullah says that a pottah and kubooleut were executed, but neither of the witnesses assert that they became witnesses of the kubooleut; they merely state they were present in the kutcherry. If the pottah was a genuine document, plaintiff would have had the witnesses to the kubooleut examined; instead of this, plaintiff has examined other persons. Beside, they are low people ‘under the influence of plaintiff’; they state that plaintiff had employed them to keep watch under the trees. If the pottah was a genuine deed, plaintiff would have examined the writer or the omlah of the kutcherry. Not having done this, it is difficult to place any reliance on it.

“ 3rd. Plaintiff has filed dakhillas for 1245, 1247 and 1249; but they are signed by Gopaul Haldar and Tarinee Churn Haldar gomashas, and plaintiff has not examined them, nor proved the dakhillas by any other way.

“ 4th. Plaintiff’s pottah shows that the talookdar’s gomashas gave the pottah, and that the talookdar subsequently confirmed it. This creates a suspicion that the pottah was in reality given by the gomashas, and that, with the view to strengthen the present case, the signature of the talookdar has been affixed to it. Besides plaintiff does not reside in the village, and cannot, therefore, be regarded as a khloodkasht ryot. Under these circumstances, the word “cheerokal,” or for permanency or in perpetuity, not being in the pottah; and plaintiff, at the same time being a pykast ryot, the present talookdar had the power of letting the lands to others. Plaintiff has filed a summary decree, dated the 6th September 1842, (22nd Bhadro 1249,) and contends that the talookdar had sued him for the rent of 1248, and obtained a decree which proves his claim. But the decree was *ex parte*; and the talook has been sold for the revenue of 1249: it is possible, therefore, that with the view to retain the trees he has contrived to obtain a decree in the plaintiff’s name, but without impugning the decree, the decree itself will not, under the arguments above stated, affect the present talookdar, however it may do so to the former talookdars.”

The plaintiff, in the reasons of appeal, impugns the justness of this decision on general grounds; contending that this case has been fully proved by the evidence adduced by him.

I find that none of the documents filed by the plaintiff have been authenticated; that the four witnesses produced by him to prove the pottah and possession, are residents of other villages, and three of them, who are said to have been keeping watch over the mangoes, when the plaintiff was dispossessed, are his dependents. Such evidence, uncorroborated by other testimony, is insufficient, in my opinion, to establish a claim of this nature; and the fact that the plaintiff was the manager on the part of the late putneedar, which is not denied in the reply, creates considerable doubt as to its justness. I, therefore, reject the appeal, and confirm the decision of the lower court, under Clause 3, Section 16, Regulation V. of 1831.

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THE 5TH FEBRUARY 1851.

Case No. 5 of 1849.

*Regular Appeal from a decision passed by the late Principal Sudder Ameen of Hooghly, Mr. James Reily, dated 19th December 1848.*

Golucknath Dhawa, (Defendant,) Appellant,

*versus*

Sreeram Koowur, (Plaintiff,) Respondent.

THIS appeal is preferred against the same decision as that recorded in the preceding case, No. 4 of 1849.

The appellant objects to the decision on the grounds that it is detrimental to his interests, and that the principal sudder ameen ought to have passed a decision on his plea on perusal of the evidence filed by him.

The plaintiff's case having been dismissed on its own merits, there was no necessity to pass any decision on the appellant's plea. To do so would be entering upon and disposing of a dispute between co-defendants, which is contrary to the rules of practice. I, therefore, reject this appeal also.

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THE 14TH FEBRUARY 1851.

Case No. 7 of 1849.

*Regular Appeal from a decision passed by the late Additional Principal Sudder Ameen of Hooghly, Syud Oosman Alee, dated 25th May 1847.*

Punchoo Munee Dasee, (Plaintiff,) Appellant,

*versus*

Sukhee Munee Dasee and others, (Defendants,) Respondents.

THIS suit was instituted *in formâ pauperis*, on the 9th January 1845, corresponding with the 27th Pooos 1251, to recover posses-

sion of 1 anna 14 gundahs and 14 cogs, share of two talooks named Kabasharrya and Sumbhoobatee, situated in, pergunnah Boro, with mesne profits: value estimated at Company's rupees 3,938-2-2-10.

The plaintiff stated in her petition of plaint, that her husband left her as heir, and being a minor, she was brought up by her mother-in-law, the defendant Sukhee Muneer Dasee, and her brothers-in-law, Ram Kumul Raee and Huree Kumul Raee, and lived with them in family partnership; that her brothers-in-law allowed her 5 rupees a month as maintenance, and paid the same up to the month of Assin 1239 B. S.; that she afterwards brought a suit in the moonsiff's court at Bydhattee to recover a balance due to her on that account, to the amount of 300 rupees, and obtained a decree which was reversed by the late judge, under date the 19th January 1841, who gave her permission to bring a separate suit against the defendants to recover possession of her husband's estate, and she accordingly brought this suit, declaring, simply, that the share of the two talooks, the subject of claim, had been acquired by her husband, Neel Kumul Raee, deceased.

The defendant Sukhee Muneer Dasee, in answer, denied the claim, pleading that the disputed property was acquired by her father Gokool Chundur Bose, in the name of her son Neel Kumul Raee, the plaintiff's husband, under a kutkuballa, or deed of mortgage and conditional sale, and her father obtained a decree for the same in the zillah court, under date the 23rd December 1799, and was put into possession; that she succeeded to possession on her father's death as his heir; that the plaintiff on the death of her husband went to reside in her father's house, and never had possession of the property for a single day.

The defendant Raj Kisto Dey pleaded that he purchased a moiety of the property sued for from the plaintiff's brother-in-law, Ram Kumul Raee, under date the 4th Bysakh 1239 B. S., and was put into possession; and 12 years having elapsed from that date the suit was barred by Section 14, Regulation III. of 1793.

The plaintiff, in reply, stated that the disputed property was purchased with her husband's money denominated joutook dhun, being money presented to him at the ceremony of unno-prasun; that the suit decreed in 1799 was instituted by Gokool Chundur Bose as her husband's guardian, her husband being a minor at the time, and the kutkabala being in her husband's name cannot be set aside.

The additional principal sudder ameen dismissed the suit on the grounds that, as the property had been decreed to Gokool Chundur Bose by the zillah court, the plaintiff's claim was untenable, and could not be heard.

The plaintiff, in this court, contends that the decree referred to by the additional principal sudder ameen, which was passed by Mr.

Thomas Brooke, formerly judge of this district, on the 23rd December 1799, could not be held as detrimental to her claim; because her husband was a minor at the time, and was not a party to the suit; and the production by her of the original deed of sale was proof of her right.

In my opinion, the suit is barred by lapse of time by the plaintiff's own showing. In support of her claim, she filed the decree of the moonsiff of Bydbattee, No. 133, dated the 19th December 1839, and the decision of the late judge, (Mr. now Sir Robert Barlow,) passed in appeal, under date the 19th January 1841. In her petition of plaint in that suit, the plaintiff stated that her husband died in the year 1211 B. S., and his maternal grandfather, Gokool Chundur Bose, died in the year 1223, and was succeeded in possession of his entire estate, including the talooks held in her husband's name, by the defendants Ram Kumul Raee and Huree Kumul Raee, her brothers-in-law, who assigned to her a monthly allowance of 5 rupees for her maintenance, which they stopped in 1239. The present suit was instituted in the year 1251, and no proof whatever has been adduced to show that she or her husband ever had possession of the property; and no facts have been set forth either in the plaint or replication to bring the case under Section 3, Regulation II. of 1805. The late judge, I observe, gave no permission to the plaintiff to bring this action; he simply recorded that the plaintiff was entitled to enjoy during her lifetime any property that may have been left by her husband, but that she could not, according to the shasters, call upon her brothers-in-law for maintenance. I reject the appeal, and confirm the decision of the lower court, under Clause 3, Section 16, Regulation V. of 1831.





## ZILLAH JESSORE.

PRESENT: C. STEER, Esq., OFFICIATING JUDGE.

THE 13TH FEBRUARY 1851.

No. 50 of 1845.

*Appeal from the decision of Baboo Loknath Bose, second Principal  
Sudder Ameen, dated the 21st November 1845.*

Junmojoy Moonshee and Radhakaunt Moonshee, (Defendants,) Appellants,

*versus*

Ramgopal Mookerjee, (Plaintiff,) Respondent.

THE plaintiff (respondent) sued the defendants for the entire rents of 1242 to 1250 inclusive. The principal sudder ameen decreed the claim, but on a reduced jumma. On appeal, the judge awarded the rent of 1250, but rejected the claim for rent of 1249, on grounds set forth in his decision. He also disallowed the claim from 1242 to 1248, inclusive, considering that, as the plaintiff had previously brought a summary suit on account of the rents of 1249, he was debarred, by the Circular Order of the 11th January 1839, from instituting a regular suit for the balance of previous years.

On special appeal to the Sudder it was decided, *vide* the Published Decisions for 1848, page 896, that the plaintiff was not debarred, under the circumstances, from bringing a regular suit, and the case was, therefore, remanded for re-trial.

The point for consideration now is, is the claim for rent from 1242 to 1248, inclusive, right and just either in whole or in part? .

In my opinion the claim is utterly false.

The plaintiff (respondent) filed, as his proof of the arrears claimed, a jumma-wasil-bakee of the year 1250, in which a sum of rupees 213-5-4 was entered as arrears of former years. This was his sole proof. The defendants (appellants), on the other hand, filed several receipts for money received in deposit signed by the defendants of the plaintiff, which, if they were allowed to be on account of rent, would prove that they had fully liquidated all claims against them on that account up to the end of 1248. The plaintiff denies both the genuineness of these receipts, and that they were given in acknowledgment of payment of rent, and the lower court

has, on most frivolous and vain grounds, given the same opinion. I disagree from this judgment for several reasons. In the first place, I don't think it likely that a man in the position of the plaintiff, a farmer under the collector, who had to pay his own rents with punctuality, would allow a ryut to remain several years in arrears, without taking measures to enforce his claims. Nor would the defendants have quietly suffered themselves to be in arrears for a series of years, when they knew that it was the farmer's object to break up their tenure, which they held on advantageous terms, and enhance the rent. It is not likely, I say, that they would have put their own interest so much into jeopardy as to withhold the rent, or not take some measures to compel the farmer to take it. The more probable view, I think to be, that the farmer, the plaintiff, was not satisfied with the sum he got as rent from the appellants, and, though he accepted it, he would not acknowledge the payment as one of rent, lest it might frustrate his design of obtaining an enhancement. Instead therefore of the usual receipt for rent, he gave the defendants a receipt as for a deposit.

The plaintiff denies the receipts in the lump. Now, with most of them, this was enough for his purpose, on the ground that his denial was as good as the affirmation of his opponents. But among the receipts are two for sums paid to a Government tehseeldar for rent of 1242, at the latter end of which year the plaintiff obtained the farm, which are not to be disavowed in the same summary manner. For, if these two receipts were not genuine, the most convincing proof of that fact was forthcoming from the collector's office; as of course a jumma-wasil-bakee was delivered to the collector by his tehseeldar, when he relinquished the charge of the estate, and this would at once show if the defendants had or had not paid the rents for which they now produce receipts. But no such refutation has been attempted, and as the plaintiff has shown himself so unscrupulous in denying the genuineness of these documents, which are clearly beyond suspicion, his word cannot be taken for much with respect to the other receipts.

On these grounds, I reverse the order of the lower court in respect to the rents of 1242 to 1248 inclusive; the plaintiff paying the costs of this appeal. In respect to the order of the judge in regard to the rents of 1249 and 1250, I have nothing to do; the order in the special appeal having reference only to the rents of 1242 to 1248.

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THE 14TH FEBRUARY 1851.

No. 6 of 1848.

*Appeal from the decision of Baboo Loknath Bose, Principal Sudder Ameen of Jessore, dated 12th January 1848.*

Gunga Govind Roy, after his death, Saradapersaud Roy for self and guardian on the part of Burrodapersaud Roy, (Defendant,) Appellant,

*versus*

Modoosoodun Bose, (Plaintiff,) Respondent.

THE plaintiff sues to recover possession of a 4 annas share of mouza Akra and three other villages, as part of turruff Muddoo Khalee, the purchase of his father in conjunction with the defendants or their forefathers.

The defendant, Gunga Govind, denies that the plaintiff has a right to a 4 annas share in the said villages, and pleads that the suit has been undervalued, and that the law of limitation is a further bar to the claim.

The principal sudder ameen decreed for the plaintiff.

#### JUDGMENT.

The question of valuation was not separately taken up by the lower court, nor was any proceeding held under Section 10, Regulation XXVI. of 1814, laying down the issues between the parties. For these irregularities, I am compelled to remand the case for re-trial, and order accordingly.

The appellant will have the value of the stamp for his appeal refunded to him.

THE 20TH FEBRUARY 1851.

No. 150 of 1850.

*Regular Appeal from the decision of Moulvee Abdoorrouf, Moonsiff of Sulkea, dated the 11th May 1850.*

Tofaz Sickdar, (Defendant,) Appellant,

*versus*

Sheikh Moteeullah and others, (Plaintiffs,) Respondents.

SUIT to cancel an attachment and recover the sum of rupees 3, annas 6, gundahs 10, exacted in process of the same, with twice as much again as damages. Suit laid at rupees 10, annas 3, gundahs 10.

Both parties in this suit, that is to say, the plaintiffs and the first defendant, claim the same piece of land, the first as having been given to him, along with some other land, in jumma by the former gatedars, and confirmed to them by their successor; and the latter

as having been given to him in perpetual lease by the late holder, Mydee Sheik, whose pottah was confirmed to him, the defendant, by the late gateedars.

The defendant, Tofaz Sickdar, claiming the land as his own, and alleging that the plaintiffs were his tenants, made an attachment of their property for an alleged arrear of rent of rupees 3, annas 4, for 1255. The plaintiffs lodged the sum in the sale commissioner's hands, and now brings this suit to set aside the attachment and recover the sum exacted from them, with twice as much again as damages.

The moonsiff observes, in his judgment, that the defendant gave no proof of any sort that the land was his. He, moreover, appears to have gone very much out of his way to make out that a petition presented to him by the plaintiffs, relinquishing all claim to the land in dispute, was not given voluntarily, but under fear of the defendant. On these grounds, he gives judgment for the plaintiffs.

#### JUDGMENT.

It is an unheard-of mode of adjudicating a case to give a plaintiff a decree, because the defendant is unable to establish his defence. It was for the plaintiffs to prove their claim, but in the present case, there is not a particle of proof to show that the land they claim belongs to them. The receipts for rent filed by them prove no more than that they hold a jumma in the mehal of the abovementioned gateedars; but that the rent paid was for the identical land claimed in this suit, the receipts afford no proof and none other was adduced. The plaintiffs' case should therefore have been dismissed as not proved. Farther, it was perfectly gratuitous in the moonsiff to question the motives of the plaintiffs in giving a dustburdaree petition, when no objection had been made to him on their part. If, however, he considered himself bound, from any doubts which might spontaneously arise in his mind, to make an inquiry with a view to satisfy himself, whether the petition was voluntary or forced, it was quite erroneous to set it aside, on the ground that it had been given under constraint, without the most conclusive proof of that fact, *vide* Printed Decision of Sudder Dewanny Adawlut, vol. 2, page 23, Sri Narain Rai and others *versus* Bhya Jha.

On the double ground, therefore, that the plaintiffs failed to prove their case, and that they afterwards relinquished their claim altogether, I reverse the decision of the lower court, and decree the appeal, with costs.

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THE 21ST FEBRUARY 1851.

No. 152 of 1850.

*Regular Appeal from the decision of Baboo Essan Chunder Dutt,  
Moonsiff of Khajoorah, dated the 9th May 1850.*

Kubir Mullah and Salamamood, (Defendants,) Appellants,

*versus*

Ekramoollah and Arzamoolah. (Plaintiffs,) Respondents.

THE plaintiffs state that the defendants formerly held under them a small jumma of Sicca rupees 1-6-16; that, in Jeit 1240, they took two bunds of land more on a jumma of Sicca rupees 1-9, when both jummas were united, and the defendants executed a single kubooleut for both, stipulating for a yearly rent of Company's rupees 3-3-3-3; that out of the rents from 1246 to 1255 B. S., the defendants only made one payment of rupees 10, through Haran Biswas, in 1252, and there is, therefore, a balance due from them, inclusive of interest, of rupees 40-3-6; to recover which is the object of this suit.

The defendants deny the execution of the kubooleut spoken of, in 1240, and allege that they hold two pottahs, one for a jumma of rupees 1-3, obtained by them in 1237, the other for a jumma of rupees 1-4, obtained in Jeit 1240, the latter jumma being subject to a deduction, if on a future measurement to be made, the land in defendant's possession should be less than that stated in the last acquired pottah. This clause gave occasion to wrangles between the parties, and no adjustment of rent could, for a long time on that account, be come to; but, in 1254, the plaintiffs drew up an account, according to which it appeared that the whole of the rents up to 1254, had been liquidated, which account made before witnesses, the defendants file as evidence that the claim now made against them is false.

The moonsiff decreed the suit in favor of the plaintiffs on proof of the execution of the kubooleut, and that the claim against the defendants was just.

The petition of appeal contains no new matter worthy of notice, except accounting for a fact upon which the judgment of the lower court was partly grounded, which was, that it was there said that defendants had given no written proof in support of their statement. It is urged by the defendants, that their proofs were before the moonsiff in another case brought by the defendants against the plaintiffs, which suit was decided on the same day that judgment was given in this.

## JUDGMENT.

I find the fact to be as stated by the defendants, and I am surprised that the moonsiff could find no better reason for refuting the proofs of the defendants than shutting his eyes to their existence.

In his judgment, however, in favor of the plaintiffs, I quite agree. They proved their case to satisfaction. The defendants' second pottah is very suspicious, both in its outward appearance and its internal conditions. It has not the look of having been written seven years ago, nor do I think that when only  $1\frac{1}{4}$  beegahs of land was given in jumma, that the rent would be left to depend on a future measurement. But be this as it may, the pottahs and the kubooleut cannot be both true, and certainly the latter document is best supported. The truth also of the claim is much strengthened from the fact, that the defendants were evidently habitual defaulters. It is admitted that they paid on one occasion 10 rupees as rent. This shows that they were in the habit of keeping back their rents, for 10 rupees is more than the rent, according to their own statement, of four years. As to the account produced by the defendants, I discredit it altogether, and, as nothing has been advanced in the grounds of appeal to shake my conviction that the demand of the plaintiffs is a just one, I confirm the decision in their favor, and dismiss this appeal, with costs.

THE 21ST FEBRUARY 1851.

No. 153 of 1850.

*Regular Appeal from the decision of Baboo Essan Chunder Dutt, Moonsiff of Khajoor, dated 9th May 1850.*

Kubir Mullah, (Plaintiff,) Appellant,

*versus*

Ekramoollah, (Defendant,) Respondent.

SUIT to obtain a receipt for 2 rupees, paid on account of rent of 1255.

This suit was instituted on the same day, as that given in the foregoing number. The parties are the same with their positions reversed.

The plaintiff gave witnesses who deposed to having been present when the alleged payment was made.

The moonsiff discredited their evidence, and considered that the suit was brought as a counteraction to the one made against the plaintiffs, by the defendants in the foregoing suit. He accordingly dismissed the suit.

#### JUDGMENT.

Having perused the evidence adduced in support of the claim, and taking into consideration the facts of the case given against the plaintiff in the foregoing suit, I agree with the lower court, in the opinion, that this is but a counteraction got up to meet the claim made against the plaintiff in that suit. Nothing in the grounds of appeal having been adduced sufficient to impugn the justness of the decision of the lower court, I confirm it, and dismiss this appeal, with costs.

THE 22ND FEBRUARY 1851.

No. 151 of 1850.

*Regular Appeal from a decision of Moulvee Syed Ahmud, first grade  
Moonsiff of Mahomedpore, dated 29th April 1850.*

Ebarut Khan and seven others, (Plaintiffs,) Appellants,  
*versus*

Kalleh Khan and sixteen others, (Defendants,) Respondents.

SUIT to recover possession of 1 anna, 13-3-2, share of the talook Seergram and kismut Rajoorgatee, pergunnah Satore. Suit valued at rupees 5-16-2-1.

The plaintiff sets forth that Gheeru Khan was the common ancestor of both parties, and that he held a 2 annas 5-1 of the said talook. On his death, about twenty-two years ago, he was succeeded by his two sons, Buddeazummah Khan, the father of the plaintiffs, and Amena Khan, the ancestor of the defendants. These held each a half share in Gheeru Khan's portion of the talook. On the 1st Kartick 1246, the defendants ousted Buddeazummah Khan from his share, and his successors now institute this suit to recover it.

The defendants deny that Buddeazummah Khan was ever in possession of the property claimed, or that the defendants ousted him. They plead that Gheeru Khan bequeathed his share in the talook to his maternal aunt and others, from whom the ancestor of the defendants purchased their several shares at various times, between 1231 and 1240; that more than twelve years having passed since the most recent of these transactions, the plaintiffs cannot be heard under the law of limitation.

The moonsiff records in his judgment, that no written proof being filed of Buddcazummah's possession, the plaintiff's vakeel was asked if he could produce any, to which he answered in the negative; that the plaintiff not having stated the nature of Buddcazummah's possession, the plaintiff's vakeel was questioned on the point, when he answered that his possession was through his ryuts, some of whom paid him cash rents and some in produce; but when the witnesses were examined on behalf of the plaintiffs, they said, in contradiction to this statement, that Buddeazummah Khan was in possession through his farmer. On which the moonsiff remarks that there was nothing said of the property having been let in farm, in the plaint, and no written proof of it, nor any writing in support of it was forthcoming, as there certainly ought to be, if the statement was true. That as the plaintiffs had utterly failed to show that Buddeazummah Khan had ever been in possession within twelve years from the date of the institution of the suit, the law of limitation was against them. The moonsiff, after expressing his decided opinion on this point, proceeds very im-



properly to discuss the general merits of the case, and at length *dismisses the suit.*

The plaintiffs appeal, urging that the written papers whereby Buddeazummah Khan's possession could have been established, were burnt together with his house during his lifetime; that, although by an oversight, no mention of the farm or of the loss of the deeds were mentioned in the plaint, it was nevertheless well established by the witnesses, that Buddeazummah Khan was in possession through his farmer; that as to the contradiction between the statement of the plaintiff's vakeel and the statement made by their witnesses, it was a difference of no moment, for what is a farmer, but a ryut? After urging such like futile pleas, the appellants shift their ground altogether, and take up the argument that the defendant's possession having been effected by fraud and violence, the claim of the plaintiffs was not barred under Section 3, Regulation II. of 1805.

#### JUDGMENT.

After the admission that the law of limitation has been infringed, it is needless to advert to that point. The appellants admit the fact, but plead exemption from the application of that law, under the fraudulent origin of the defendant's possession. But this plea ought to have been expressly urged in the first instance, instead of being reserved till the plaintiff's case had broken down in the lower court. A general charge of violence and fraud was certainly made in the plaint, but the benefit of Regulation II. of 1805, was not claimed. Indeed, the alleged violence and fraud had reference to the dispossession in 1246, from which, to the date of bringing this action, twelve years had not expired; so that the provisions of Regulation II. of 1805, were clearly not looked to when the plaint was drawn up.

Being of opinion that the plaintiffs have failed to show that they or their predecessor have been in possession of the property claimed at any period during the twelve years previous to the institution of this suit, and concurring entirely in the arguments of the lower court on this head, none of which have been refuted in the grounds of appeal, I confirm the decision passed, and dismiss this appeal, with costs.

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THE 24TH FEBRUARY 1851.

No. 149 of 1850.

*Regular Appeal from a decision of Baboo Essan Chunder Dutt, Moonsiff of Khajoor, dated 4th May 1850.*

Jummirooddeen and Munneerooddeen, (Defendants,) Appellants,

*versus*

Greedhur Sirkar, (Plaintiff,) Respondent.

THE plaintiff sues under a bond for rupees 26-9, principal and interest.

The defendants deny the execution of the bond, and plead that the claim is false, and has been got up against them on account of a quarrel and illwill existing between the plaintiff and one Ishore, whose servant the defendant Munneerooddeen is.

The moonsiff decrees the suit on proof by five witnesses of the due execution of the bond.

The defendants appeal, and urge in their petition that the witnesses of the plaintiff were generally low fellows and dependant on the plaintiff; that the defendants proved that a bad feeling existed between their master, Ishore, and the plaintiff; that Munneerooddeen's signature on the vakalutnamah executed by him, was not like his signature on the bond, and that the paper on which it was written was made to look like an old document by having been rubbed with the hands or smeared over.

#### JUDGMENT.

After an attentive perusal of the oral evidence on both sides, and on a careful examination of the bond, I am of opinion that the plaintiff has established his claim, and that the evidence adduced by the defendants has failed to invalidate it. The grounds of appeal are but the assertions of a dissatisfied party to throw unmerited discredit on the testimony of his opponent's witnesses, and to claim undue credit for his own; and, as I see no reason to call in question the justness of the lower court's decision, I confirm it, dismissing this appeal, with costs.

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THE 25TH FEBRUARY 1851.

No. 158 of 1850.

*Appeal from the decision of Baboo Essan Chunder Dutt, Moonsiff of Khajoor, dated 16th May 1850.*

Ramdhun Ghose and others, (Defendants,) Appellants,

*versus*

Fakeer Chand Roy, (Plaintiff,) Respondent.

THE plaintiff sues for arrears of rent of part of 1255, to the amount of rupees 5-9-12.

The defendant replies that he sold his jumma, in Falgoon 1255, to Nubboo Komar, and that he is not answerable for the rent sued for.

Nubboo Komar confirms this statement, and alleges that he had his name registered in the plaintiff's books as occupant of the jote; that he paid the rents due for 1255, and that he holds plaintiff's dakhillas for the same.

The moonsiff records in his decision, that it was proved that defendant was in possession of the land for which rent is now claimed; that the defendant adduced no evidence to refute this, and that as to the alleged purchase of the jote by Nubboo Komar, that transaction had been already declared fraudulent in a case in which this plaintiff took out execution of a decree for rent of the early part of 1255, due to him against the defendant. On these grounds, he holds the defendant liable, and gives a decree against him.

Both defendant and claimant appeal, impugning, generally, the grounds on which the lower court founds its decision.

#### JUDGMENT.

The record shows that in a former suit given against this defendant, an attempt was made by him, in conjunction with the claimant, to evade his obligations, under an alleged transfer of his jote to the latter. The court disallowed this objection, and, declaring the transfer fraudulent, proceeded in the usual course to enforce its decree, when the defendant or the claimant satisfied it by the payment of the amount into court. The same documents are relied upon by defendant and claimant in this suit; but as they have been declared by an order of court to have been fabricated, and were not allowed to stay the execution of a decree for rent of part of the year 1255, so they cannot be received in evidence for the remainder of the claim of 1255, or for any future period, so long as the order declaring them unworthy of credit remains in force.

The decision of the lower court is therefore upheld, and the appeal dismissed, with costs.

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THE 25TH FEBRUARY 1851.

No. 159 of 1850.

*Appeal from a decision of Baboo Essan Chunder Dutt, Moonsiff of Khajoorah, dated 16th May 1850.*

Nobboo Komar Mitter, (Claimant,) Appellant,

*versus*

Fakeer Chand Roy, (Plaintiff,) Respondent.

THIS is a second appeal from the decision of the moonsiff, of which the particulars and the result have been given in the foregoing number.

The appeal is dismissed on the grounds of my judgment in the suit No. 158 of 1850 ; a copy of the final order being filed with the record of this suit.

THE 26TH FEBRUARY 1851.

No. 162 of 1850.

*Appeal from a decision of Moulvee Abdoor Rubb, Moonsiff of Dhurmpore, dated 17th May 1850.*

Myhaish Chunder Roy, (Plaintiff,) Appellant,

*versus*

Gunga Dhur Naie and others, (Defendants,) Respondents.

THE plaintiff sues on a bond executed ten years and five months before the institution of the suit, by the defendants, in favor of his father for rupees 15, principal, and 15 rupees interest.

The defendants deny the bond, and allege that the suit is altogether false, having been got up by one Ramanath, to spite Neelmonie, whose ryots the defendants are. The plaintiff is Ramanath's relation.

The moonsiff discredits the two witnesses produced by the plaintiff to prove the bond. The bond itself, he remarks, is suspicious, and there is evidence to show that Neelmonie and Ramanath have had sundry disputes about a share in the property on which the defendants reside, and that it does not appear that plaintiff or his father ever had any trading or banking business in Jecarukee or elsewhere. On these grounds, he considers the claim not established, and dismisses it.

The plaintiff appeals against the grounds generally upon which the lower court has pronounced judgment unfavorable to his cause ; but as I see no reason, after a perusal of the record, to doubt the correctness or justness of that decision ; and regarding, moreover, all these old claims with great suspicion, and that nothing but the most complete and convincing proof ought to be accepted in such cases, I agree in the propriety of the order of the lower court, and accordingly dismiss this appeal, with costs.

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THE 26TH FEBRUARY 1851.

No. 165 of 1850.

*Regular Appeal from a decision of Moulvee Abdoor Rubb, Moonsiff of Dhurmpore, dated 20th May 1850.*

Myhaish Chunder Roy, (Plaintiff,) Appellant.

*versus*

Docowree Mundle, (Defendant,) Respondent.

THE plaintiff sues on a bond for 31 rupees, principal, and 31 rupees interest, executed in Kartick 1246 by the defendant, in favor of the plaintiff's father.

The defendant denies the bond, and alleges that the suit is false, having for its object to injure Neelmonie, whose ryut the defendant is; that the plaintiff is a relation and creature of Ramanath, between whom and Neelmonie a quarrel has for a long time existed about a share in the village in which the defendant resides and has some land.

The moonsiff discredits the bond, and considers the witnesses to it unworthy of credit. He remarks that there is evidence to show that quarrels have occurred between Neelmonie, whose ryut the defendant is, and Ramanath about a share in the village of Jeearukce, and that the plaintiff has not been able to show that either he or his father ever had any money transactions in that village.

The plaintiff appeals against the grounds generally upon which the lower court has pronounced judgment unfavorable to his cause; but, as I see no reason, after a perusal of the record, to doubt the correctness or justness of that decision, and regarding, moreover, all these old claims with great suspicion, and that nothing but the most complete and convincing proof ought to be accepted in such cases, I agree in the propriety of the order of the lower court, and accordingly dismiss this appeal, with costs.

THE 27TH FEBRUARY 1851.

No. 160 of 1850.

*Appeal from a decision of Baboo Doorgapersaud Roy, Moonsiff of Noabad, dated the 15th May 1850.*

Sunkuree Dybea and Ramkaunt, (Plaintiffs,) Appellants,

*versus*

Chunder Monie Gungopadhia, Cheekun Mundul and  
Osman Sheik, (Defendants,) Respondents.

SUIT to obtain a judicial confirmation of plaintiffs' right to certain lakhiraj lands in Kampta and other villages.

The substance of the plaint is that the lakhiraj lands consist of 3 bunds containing 2 beegahs, Chunder Monie, the defendant, al-

leging that he purchased the 3 bunds from the two plaintiffs, and their other partner Muddun Mohun sued Cheekun, the 2nd defendant, for arrears of rent. Cheekun replied that the alleged purchase was false, and that the plaintiffs were still the possessors of the lakhiraj; but Chunder Monie having filed his deed of sale, and a kubooleut from Cheekun, the moonsiff gave the suit in Chunder Monie's favor, but declared that plaintiffs' right was in no way injured thereby. The plaintiffs now sue to obtain a confirmation of their right.

Chunder Monie Gangoolee replies that Sunkuree is a helpless woman, and that she never was in possession of the property claimed; that Ramkaunt was the responsible partner and sole manager, and that he sold the three bunds to him, on the 25th Maugh 1251. He pleads that Sunkuree never having been in possession, has no right to sue him, but ought to have sued her partner first to establish her right to a share in the property.

The moonsiff, taking the proof which was adduced by the defendant Chunder Monie in the suit for rent, as sufficient proof of the truth of the sale by Ramkaunt, dismissed his claim, but gave Sunkuree a decree as she did not join in the sale, and her right cannot be sacrificed by any act of her partners. He refuses, however, to award her any costs as having sued along with Ramkaunt whose claim was rejected: he was unable to make any proper distribution of costs.

Both plaintiffs appeal; Sunkuree because costs have not been allowed her, and Ramkaunt because his claim has been dismissed.

#### JUDGMENT.

In this case, no proof was given as to the truth of the alleged sale, that fact having been taken as established, because it was so considered in another case, but that case was one in which the sellers were not a party. Moreover, in the suit between Chunder Monie and Cheekun, the validity of the sale was not the question at issue. The point then was, ought Cheekun to be bound by his kubooleut or not? The question, sale or no sale, ought to have formed no part of the investigation. True, that the moonsiff did take evidence of the sale in the case of rent, but that was altogether superfluous, and his opinion on that point cannot be binding on the present parties, without whose formal presence in the suit, no final award, prejudicial to their interests, could properly or legally be pronounced. The sale being denied, it is essentially necessary that clear and positive proof of that fact be adduced in this case. This not having been done, I must remand the suit for trial *de novo*.

As by the nature of this order the case will be re-opened, the moonsiff will consider, with reference to the defendant's plea, that Sunkuree had nothing to do with the property, and that Ramkaunt was sole manager, whether a sale by him ought, or ought not, to

be considered binding on Sunkuree, especially, as she, by not having objected to it for nearly 7 years, may be presumed to have acquiesced in it.

The moonsiff too must give his consideration to the other objection raised by the defendant, and give his opinion whether Sunkuree ought not first to have sued her partner for possession, or whether she is right in bringing her action, without such suit, against the defendant.

However trifling, vain, or irrelevant a plea may be, a court is bound to give some notice to it, and ought not to pass it over in silence.

The value of the stamp for the appeal will be refunded to the appellant.

## ZILLAH MIDNAPORE.

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PRESENT: W. LUKE, ESQ., JUDGE.

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THE 4TH FEBRUARY 1851.

No. 186.

*Appeal from a decision of the Moonsiff of Kasigunge, Khyrat Hossein,  
dated 4th July 1849.*

Secbram Dey and Doorgaram Dey, (Defendants,) Appellants,

*versus*

Mudhoosooden Mytee, (Plaintiff,) Respondent.

THIS suit was remanded for re-trial on the 19th August 1850. It appears from the records of the case that the plaintiff took a farming lease of Mehal Kuglagureea in the year 1252 Umlee, which was to expire in 1264. The defendants are tenants in the farm and cultivate 10 b. 8 c. 9 p. 12 of land at an annual rental of Company's rupees 21-2-13 and 12 koorces in kind, a portion of this they (defendants) paid in the years 1254, 1255, and 1256 Umlee, but failing to make good the remainder, plaintiff now sues.

The defendants deny their liability *in toto*, and plead that the village in which their lands are situated belong to one Abdool Luteef; that he is incapable from insanity of managing his affairs, and that Meeah Jaun is his surbarakar to whom they have paid their rents. Meeah Jaun, as an opposing party, confirms this statement. The moonsiff considers the plaintiff to have clearly established his title as a farmer, and his right to collect at the rate specified, and gives a verdict in his favor. It is to be gathered from the proceedings that the real source of contention between the parties is plaintiff's right of possession in Mehal Kuglagureea in virtue of his farming lease. It would also appear that this lease was executed in Kartick, and duly registered in the kazee's office in Auhun 1254 Umlee, and that Abdool Luteef was a party to the transaction. It is proved by evidence not controverted by appellants, that the plaintiff entered on possession in 1254 and has continued so ever since. The opposing party, Meeah Jaun, in collusion with whom the appellants have evidently set up their defence, alleges his possession as authorized agent of Abdool Luteef, whom he declares to be insane and never to have been a party in giving the pottah which the plaintiff produces. Abdool Luteef, on his own



behalf, has offered no opposition, and his silence must be construed as consenting to plaintiff's lease. Meeah Jaun adduces no evidence whatever of his right to the position he has assumed as Abdool Luteef's representative, and his objections must, therefore, be altogether overruled. There can be no question, I think, that plaintiff's title as farmer is good and valid; and the next point for adjudication is whether defendants are his tenants, and as such for what jumma are they liable? The fact of being tenants in Mehal Kuglagureea they admit, but they deny cultivating as much land as stated by plaintiff, and the amount jumma he claims. They are unable, however, to adduce any proof of their averments. On the other hand, the plaintiff's allegations are supported by a kuboolent, accounts, the testimony of witnesses, and local inquiry conducted by an ameen deputed to the spot; all which evidence appellants are unable to controvert.

I therefore see no reason to disturb the decision of the lower court, which is affirmed; appellants paying all costs.

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THE 4TH FEBRUARY 1851.

No. 260.

*Appeal from a decision of the Moonsiff of Kasigunge, Khyrat Hossein, dated 14th September 1850.*

Mohun Singh, (Plaintiff,) Appellant,

*versus*

Nobinchand Bhooya, (Defendant,) Respondent.

THIS is an action for a bond debt, laid at Company's rupees 52-15-3 $\frac{1}{4}$ .

The defendant allows judgment to go by default. The moonsiff dismisses the suit, because the bond is not certified by *two* witnesses as prescribed in Regulation III. of 1793, Section 15. The loan was made by, and bond given to, plaintiff's brother, who died leaving his property to his surviving brother (the plaintiff,) who was one of the witnesses attesting the bond. According to the moonsiff, the change of Mohun Singh's position by the demise of his brother, renders his testimony, as regards the bond, null and void, which is absurd, as it is tantamount to saying that had there been but two attesting witnesses of whom the plaintiff was one, that the law could afford no redress whatever. The plaintiff deposes on oath, in this court, to the truth of the bond which is corroborated by the evidence of another witness given before the moonsiff.

I therefore see no reason whatever to doubt the claim, and accordingly give a verdict for the appellant, with costs, and reverse the decree of the lower court.

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THE 17TH FEBRUARY 1851.

No. 169.

*Appeal from a decision of the Moonsiff of Mohunpore, Gunganarain Mookerjea, dated 22nd May 1850.*

Ram Churn Mytee, (Plaintiff,) Appellant,

*versus*

Ajoodia Ram Paul, (Defendant,) Respondent.

THIS is an action for possession of certain rights and interests in mouza Alumpore and Kistopore, with mesne profits, laid at Company's rupees 115-14-17-1-2.

The plaintiff avers that he purchased on 19th Assar 1254, a six anna interest in the talook aforesaid, paying a jumma of Company's rupees 31-5-13-3, for Company's rupees 500, and entered on possession; that he applied to the collector to have his name recorded on the rent roll of the district, which application was rejected on demurrers raised by the defendant. The defendant denies plaintiff's possession, and pleads that the property in dispute was sold to him by Gunganarain Doss, &c., on the 15th Assar 1254; that the deeds of transfer were duly executed and registered, and that he entered on possession and paid his share of the revenue.

Gunganarain Doss and Hurnarain Doss as 3rd parties, affirm the plaintiff's averments.

The moonsiff rejects plaintiff's kuballah, and admits the validity of that of defendant. He observes that plaintiff's deed of sale is not registered as prescribed by law; that the defendant's is duly registered which gives it a preference over the other, that the kazees' registration of the former document is of no value, inasmuch as the kazees did not belong to the pergunnah in which the disputed property is situated; that the prominent part which the kazees took in drawing out plaintiff's kuballah with his own hand, &c., and the informalities that occurred in registering it, excite suspicion; that he (kazees) colluded with plaintiff in his attempt to nullify the defendant's deed of sale. He farther observes that the seller's admission of their having sold to plaintiff is also collusive, and that plaintiff's plea of possession, and of having paid rent, is unsupported by trustworthy evidence; that, on the other hand, the defendant's kuballah is duly certified by attesting witnesses, and it is clearly proved by local inquiry, conducted by an ameen, by dakhillas granted by the collector, and the testimony of sundry witnesses, that defendants entered on possession and have continued therein to the present time.

Amidst a mass of conflicting evidence on both sides, it is difficult to determine which is the most trustworthy. The moonsiff has overlooked the circumstantial evidence and probabilities, which are of importance in assisting the judgment where the oral and documen-

tary evidence is so equal and so contradictory one of the other. It appears, however, that the stamp paper on which the plaintiff's deed of sale and counterpart are written, are endorsed to Gunganarain Doss, the 3rd party, and bear date "Conti 24th June." The defendant's stamp papers are similarly endorsed, but of one day later date, viz. 25th June.

The inference is, from this circumstance, that it was not Gunganarain's *intention* to sell to defendant, or the deed of sale would have been engrossed on the stamp of the 24th June, which was in his (Gunganarain's) possession, and not filled up till the 1st July following. If the transfer to defendant was made with Gunganarain's concurrence, there was no necessity for the purchase of the second piece of stamp paper, that of the 25th June, and though it is endorsed to Gunganarain Doss, it is improbable, I think, that he was the purchaser of it, or was ever a party to its purchase. It is true there are informalities in regard to the registration of plaintiff's deed by the kaze, but there is nothing to warrant the suspicion that the kaze acted collusively with a view to injure the defendant. The plaintiff's deeds (kuballah and counterpart) were drafted on the 1st July 1847, and registered in the kaze's books on the 4th of the same month, and from an inspection of the kaze's registers, both in original and copy, I can find no irregularity in them or any thing to excite suspicion that the registration was not made in good faith.

The property transferred is not in the pergunnah to which the kaze belongs; but he resides in the same village with the seller, and, as the plaintiff's deeds were executed in the seller's house, the probability is that the parties applied to the kaze most easily accessible without any fraudulent intention, but in ignorance that the registration, under the circumstances, would not be valid. The registration, however, is good and valid; that the plaintiff's kuballah was executed on the 4th July 1847, and that the seller was a consenting party. On the other hand, the defendant though he states his deed of sale was executed on the 15th Asar 1254 Umlee (27th June 1847) and produces evidence to prove that a power of attorney was executed on *the same date*, with a view to a formal registration of the said deed at the sudder station, it was *not registered* till the 18th August 1847, after a lapse of one month and twenty days. The cause of this delay is not explained. It appears, however, from the records that plaintiff applied to the collector on the 11th Sawun 1254, to have his name recorded on the rent roll in right of his deed of sale, and that it was after the service of the usual istihar-nama had been reported to the collector, that defendant caused his deed of sale to be registered with a view to his opposing, as he did, on the 28th August, the entry of plaintiff's claim in the mutation register. If, then, the plaintiff's claim and the documents on which it was based were altogether fraudulent and collusive, why did defendant allow so long a time to elapse before registering his deed

of sale and offering any protest whatever? Had he really acquired a *bonâ fide* title at the period and in the manner he alleges, the probabilities are he would at once have taken the precautions which he only considered necessary some weeks after the sale of the property to plaintiffs, a delay which defendants cannot explain, and which carries with it an argument in favor of the truth of plaintiff's title. I attach no credit to the local inquiry, as the statements of the two ameens deputed are opposed to each other, and neither of them is, in my opinion, trustworthy. The witnesses certifying the defendant's deed of transfer are not entitled to credit; for instance "Nursing Doolie" swears he witnessed the execution of the deed and the payment of the money to the seller, on the 15th Assin 1254, at 11 o'clock A. M. at Balighat, and, in another place, he swears he paid rent into the treasury at Midnapore during office hours on account of the defendant, on the 16th Assar 1254. The distance between the two places being upwards of twenty coss, and, during the rainy season, through an almost impassable country.

On due consideration of all the circumstances, I consider the proof predominates in favor of the plaintiff, (appellant) and give a verdict accordingly, with costs, reversing the decision of the lower court.

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THE 17TH FEBRUARY 1851.

No. 201.

*Appeal from a decision of the Moonsiff of Pertabpore, Golam Sobhan, dated 3rd July 1850.*

Mudun Mohun Udhicaree and others, (Defendants,) Appellants,  
*versus*

Ramlochan Bhuttacharge, (Plaintiff,) Respondent.

THE plaintiff sues for a bond debt, laid at Company's rupees 144-12.

The defendants deny the claim, and urge various reasons why the bond is a fabrication. The moonsiff thinks the plaintiff fully establishes his claim, and gives a verdict in his favor.

In appeal, the defendants demur to moonsiff's arguments, and to his receiving the testimony of attesting witnesses as trustworthy. Of the three witnesses cited, Ram Mohun Chooror is clearly proved by the records to have been guilty of perjury. The moonsiff admits there is a discrepancy in his evidence which, however, (he observes) is reconciled by the plaintiff. The said witness deposed on oath before the moonsiff of Culmejole that his father's name was *Doorga-ram Chuckerbutty*, and in his suit he swears his father's name is *Doorgadhun Chooroo*. This contradiction, the moonsiff considers satisfactorily explained away by the plaintiff (not by the witness himself) who states that one was witness' own father, and that the

witness was the adopted son of the other. The evidence of the other witnesses is evidently tutored and beyond all probability, and I cannot agree with the lower court that plaintiff's claim is good and valid. On the contrary, in my opinion, he altogether fails to establish it.

The appeal is decreed, with costs, and the moonsiff's decision reversed.

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THE 17TH FEBRUARY 1851.

No. 204.

*Appeal from a decision of the Moonsiff of Mohunpore, Gunganarain Mookerjea, dated 15th July 1850.*

Mudhoo Sooden Mytee, (Defendant,) Appellant,

*versus*

Mudhoo Sooden Doss Mohapatur, (Plaintiff,) Respondent.

THIS is an action for possession of certain rights and interests in mouza Teetool Moree and Soora, laid at Company's rupees 21-4-18.

The plaintiff states that he purchased from Telokram Mytee, on the 3rd Jyte 1251 Umlee, 16 gun., 3 kas., 9 til., interest in the afore-said villages, bearing a jumma of Company's rupees 12-14-11, including julkur, &c., for Company's rupees 195; that he entered on possession 8th Srabun 1254 Umlee. In May 1252, Telokram died, and Boloram succeeded him as heir, and, in collusion with the defendant, Mudhoo Sooden Mohapatur, ousted him (plaintiff), on 3rd Bysakh 1252 Umlee.

The defendant, Mudhoo Sooden Mytee, denies plaintiff ever had possession, and alleges that the land which plaintiff claims was sold to him absolutely by Telokram Mytee; that the deed of sale was duly registered, and his name recorded on the rent roll of the district in 1842; that he has paid the Government revenue ever since. The defendant Boloram affirms the plaintiff's allegations.

The moonsiff gives a verdict for plaintiff.

The moonsiff has reversed the order of things, and made the plaintiff's claim to rest *not* on the strength of his own title, but on the weakness of that of his adversary. Possession is nine-tenths of the law, and defendant proves his possession since 1842 to the present time by the collector's proceedings, recording his name in the mutation register, and by the dakhillas for revenue paid into the Government treasury. To controvert this evidence, plaintiff produces a kuballah, which, he states, was executed in his favor by Telokram, but it is not registered, nor can he prove that possession followed its execution. Boloram's confession is good as regards the plaintiff individually, but cannot prejudice the right of a third party. If Boloram deem himself aggrieved by defendant, he has his remedy in a regular suit.

THE 18TH FEBRUARY 1851.

No. 216.

*Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq., dated 24th July 1850.*

Ram Mohun Mytee and others, (Defendants,) Appellants,

*versus*

Anund Lal Dass, (Plaintiff,) Respondent.

THIS is an action for authority to assess and resume certain lands in mouza Dukhin Gobindpore, ponds, &c., laid at Company's rupees 937-9-5½.

The plaintiff avers he is the proprietor of 8-16 of the mehal above mentioned in right of purchase at a sale held in 1843, and that the defendants are in possession of 10 beegahs, 6 cottahs, 7 biswas of land in his estate, for which they refuse to pay rent on the plea that it is lakhiraj.

The defendants demur on technical points, and also plead that the land claimed is lakhiraj, and that their title is supported by sunnuds duly authenticated.

The principal sudder ameen thus records his judgment: "We think defendants' objection to the mode of bringing this action untenable, because we find plaintiff claims no more than his own share of defendants' land. He need, therefore, join no one in asserting his right to his own; besides, if he were to wait till his co-talookdar chose to join him, he might be kept out of his own till Doomsday. Though this suit is avowedly brought for possession of the land aforesaid, yet the real object is to obtain the power of assessing the defendants' ground, therefore, had the action been laid differently, it would have been irregular and consequently not cognizable. To establish the negative of their last issue, defendants have filed a document purporting to bear the kazeer's seal, and to be copy of a sunnud No. 15996; but there is not the slightest evidence of its authenticity; therefore, it is of no avail whatever. Secondly, there are three taidads or sooruthals without date and unattested by official signature or seal, consequently, they are equally as useless as the exhibit first named. But even admitting the documents aforesaid all that could be desired in point of authentication; yet, for want of specification, they would be perfectly useless to establish defendants' lakhiraj title, for only one mouza. Oochitpore is named, and it is impossible to conclude that under the word "Ogyra" the other three mouzas are included. Lastly, there is a copy of the special commissioner's roobukarree releasing 8 beegahs situated in Oochitpore; but it does not authenticate or strengthen, in the slightest degree, the exhibits aforesaid; thus there is no satisfactory evidence of defendants' land being lakhiraj. We quite agree with the collector that defendants' claim is wholly untenable.

It is true that the same authority on a former reference, in case No. 22, gave it as his opinion that defendants' title to 30 beegahs, 10 cottahs, as per sunnud No. 15996 was established. He accounts for the difference of opinion by saying that, on the first occasion, the report was made without a full investigation. For the reasons above cited, considering that defendants have wholly failed in proving their right to hold their parcels of ground now claimed rent-free, we give judgment in plaintiff's favor, with costs.

In appeal, the defendants demur to the arguments used by the lower court for rejecting their title deed.

The only issue to be tried in this case is whether the defendants have proved their title to hold the lands in Dukkhn Govindpore rent-free. In this they have altogether failed, and I, therefore, see no grounds for interfering with the decision of the lower court, which is affirmed, without serving a notice on respondent.

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THE 21ST FEBRUARY 1851.

No. 18 of 1850.

*Original Suit.*

Messrs. J. and R. Watson,

*versus*

Lall Singh and Himmud Singh.

THE plaintiff sues to resume and assess certain lands pertaining to mouza Dolederriah, and to recover rent at the rate of 10 annas per beegah, from 1246 B. S. to the month of Poos 1257 B. S., laying his suit at Company's rupees 5803-9-9.

Plaintiff avers that the Dolederriah lands were formerly resumed as lakhiraj, but released by the special deputy collector and special commissioner as forming part of the zemindar's mal estate, recorded on the rent roll of the district at the decennial settlement; that defendants are tenants of the land aforesaid; that plaintiff called on them in the usual manner to enter engagements from their leases, by serving them with the usual notice prescribed in Regulation V. of 1812; that they disregarded this notice, and plaintiff having no other alternative, has filed the present suit.

The defendants demur to this action as illegally laid; inasmuch, as the plaintiff has never specified the date of the ilamnamah, nor when nor how served, which is essential to fix the correct value of the suit.

Before entering into the merits of plaintiff's claim, the issues arising on points of law must be disposed of. The issue, as alleged by plaintiff, is that to specify the date of ilamnamah on plaint or replication is not absolutely necessary. The issue, as stated by defendants in bar of the suit, is that the particulars touching date, &c. of ilamnamah must be distinctly recorded.

The plaintiff sues to assess certain lakhiraj lands at 10 annas per beegah; and, at the same time, claims rent at that rate for eleven years and nine months. Before he can sue for an enhanced rent or to fix one, it is requisite he should serve his tenants (the defendants) with a notice as prescribed in Sections 9 and 10, Regulation V. of 1812. Claims to rent, under the circumstances above stated, have a prospective and not a retrospective effect, and it is, therefore, absolutely requisite that the date and mode of serving the ilamnamah should be defined, otherwise the suit cannot be correctly valued, and the jurisdiction regulated.

The plaintiff is accordingly nonsuited.

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THE 24TH FEBRUARY 1851.

No. 23 of 1850.

*Original Suit.*

Debanund Chowdhry and others, (Plaintiffs,)

*versus*

Raja Judhonath Bhunge, (Defendant.)

THIS is an action for possession of Ghur Amoorda and Khaunpore with 27 villages, laid at Company's rupees 7199-6-5-2, 63 tils, 14 biswas.

The plaint sets forth that the aforesaid mouzas pertained to Beloru Chur, plaintiff's ancestral property; that in the year 1825, 8th November, the register of Balasore, in a decision made under the provisions of Regulation VI. of 1813, gave the defendant possession of them. Previous to the institution of the suit before the register, the villages in dispute had been subjected to inquiry, under the provisions of Regulation II. of 1819, as to whether they were liable to assessment, and whilst the case was pending, and till its ultimate disposal in 1837, the plaintiffs preferred their claims more particularly in 1838, when the commissioner, on the 19th April of that year, overruled their objections to the payment of the collections of the resumed villages to the defendant Judhonath Bhunge, and referred them to a regular suit, which they now institute. The defendant denies plaintiffs ever were in possession, and demurs that the suit is barred by the statute of limitation, and by Sections 12 and 16, Regulation III. of 1793, and that it is under-valued.

The issues as recorded in the principal ameen's proceeding, under Section 10, Regulation XXVI. of 1814, are, first, whether the claim is barred by law of limitation; secondly, whether it is undervalued; and, thirdly, whether plaintiffs are entitled to the land now claimed. The plaintiffs lay stress on the proceedings carried on in reference to the resumption of the lands in dispute, and plead that their objections in reference to them, were not finally disposed of till April



1838, when the commissioner ordered the collections of the resumed villages to be paid to the defendant. They plead, farther, that they continued to urge their claims continually from 1821 till that date, and that the period thus occupied cannot, under Section 14, Regulation III. of 1793, be calculated in the twelve years. The cause of action arose on the 8th November 1825, when the register decreed the defendant's possession. The measures taken by plaintiffs in the resumption courts were with a view of obtaining a release of the villages in their favor, or to ensure a settlement being made with them in the event of the Government title proving good and valid, and any decision given by them had no influence on the decision passed by the register in 1825, as that decision was absolute and final till set aside by a regular suit which the plaintiffs now institute after a lapse of twenty-four years and eight months.

The plaintiffs' claims preferred in the resumption courts can avail him nothing, as they were not courts of competent jurisdiction as contemplated in Section 14, Regulation III. of 1793. The plaintiffs' claim is accordingly dismissed, with costs.

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# ZILLAH PATNA.

PRESENT: R. J. LOUGHNAN, ESQ., JUDGE.

THE 21<sup>ST</sup> FEBRUARY 1851.

No. 126.

*Appeal from a decision passed by the Moonsiff of the Eastern Division,  
Sheikh Alee Azeem, on the 27<sup>th</sup> June 1850.*

Birjoo Muhto, (Defendant,) Appellant,

*versus*

Khaja Agha Jan, (Plaintiff,) Respondent.

SUIT laid at rupees 27-1-9, for the amount of instalments of a bond, with interest, executed by Fakeer Chund Muhto, to whom defendants are heirs for the repayment of a loan.

The defendants contended that Fakeer Chand never received any money nor signed a bond, but he did agree to pay a sum of money, viz., 100 rupees, the amount stated in the bond by way of fine (nuzurana) for the renewal of his lease of certain lands, and executed a deed agreeing to pay it by three annual instalments corresponding to the period for which the lease was renewed, and that he paid the amount with the rents of the lease. The questions for decision are these: 1st, was the moonsiff right in considering the advance of 100 rupees by way of loan proved by the evidence of witnesses, whose names appear as witnesses on the bond, or not? 2nd, was he right in rejecting as not worthy of credit, and as not duly proved, the evidence of certain account (jumma-wasil-bakees) of the payment of the rents of the lease which contained payments on account of a fine (nuzurana) of 100 rupees? His reasons being, first, that the putwaree whose signature appeared on these accounts, and who deposed to their being genuine, had been discharged since the close of the period in the accounts, and he might be suspected of deposing falsely from enmity; that it was strange the defendant had not obtained a written authority from plaintiff to pay to the putwaree, and had gone on paying without getting a receipt from plaintiff or his gomashtha, or having the accounts authenticated by plaintiff or his gomashtha.

The moonsiff's decision I find to be just and equitable upon these points; for, in appeal, the defendants have acknowledged that the deed which plaintiff calls a bond (tumussook) was executed and

delivered by Fakeer Chand. That deed contains an acknowledgment of the receipt of the amount on the part of Fakeer Chand, and an agreement to pay interest along with the instalments, and no mention whatever of fine or nuzurana, and the witnesses examined by the plaintiff declare the transaction to be what it appears in the deed. After this, it is in vain that the defendant denies the receipt of any money, and even adduce the testimony of an illiterate witness whose name appears on the bond to the same effect. That witness' (Sheith Chumun's) testimony is contradicted by the pleas of the appeal; for he declares that Fakeer Chand signed no bond (tum-mussook) but an agreement to pay nuzurana. It is also contrary to the whole tenor of the deed itself. The moonsiff's reasons for the rejections of the accounts are good, and he might have added that the insertion of payments on account of a bond, acknowledging the receipt of a loan under the name of payments of nuzurana in accounts of the collections of rent of lands, was sufficient to throw discredit on the accounts. Moreover, in these very accounts, Mitrajeet Bhugut is named as the gomashtha: how happens it that the accounts are not signed by him, and that the defendants failed to cause his attendance even to give his evidence? For the above reasons, I dismiss the appeal, without summoning the respondent to plead, and confirm the decision.

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THE 26TH FEBRUARY 1851.

No. 117.

*Appeal from a decision passed by Sheikh Alee Azeem, Moonsiff of the Eastern Division, on the 21st May 1850.*

Gopal Singh, (Defendant,) Appellant,

*versus*

Koonj Beharee Singh and others, (Plaintiffs,) Respondents.

THIS was a suit laid at rupees 30-8-6, for the amount of arrears of rent and advances of tuccavee with interest. The moonsiff decreed the arrears only, rejecting as unworthy of credit, the proofs adduced by defendant of the payment of the rents due. His reasons for doing so were, first, that the putwaree who testified, regarding a receipt adduced as evidence that it had been granted by the plaintiffs, under the signature of the witness, had been discharged from his office since the date of it, and, therefore, his evidence was liable to suspicion; second, that the amount had not been entered into an account of the collections of the year which the plaintiffs filed in court. The questions for decision in this appeal are whether the said account was duly proved, or whether it ought to be considered spurious by reason of the insertion in it of the items of tuccavee which the moonsiff considered fabricated, and whether the putwaree's evidence must be received or rejected as unworthy of credit. On

these questions, I decide as follows. The accounts in question have not been established by any direct evidence. The reasons assigned by the moonsiff for considering the tuccavee items in them fabrications appear to me good and sound, and his decision disallowing tuccavee on that ground, has not been appealed from. These accounts having been thus shown to have been altered in one instance are suspicious and must be rejected *in toto*. There is no other reason, except the circumstances of the putwaree's discharge, for discrediting his evidence, and that is clearly not sufficient. The receipt authenticated by the putwaree proves the payment of the balance, and the suit ought, therefore, to have been dismissed. I decree the appeal, and, reversing the moonsiffs decision, direct that the suit of the plaintiff be dismissed, and all costs of both courts be paid by them to the appellant, with interest to the day of payment.

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THE 26TH FEBRUARY 1851.

No. 127.

*Appeal from a decision passed by Sheikh Allee Azeem, Moonsiff of the Eastern Division, on the 23rd July 1850.*

Chukurban Singh, (Defendant,) Appellant,

*versus*

Sheo Dyal Singh and others, (Plaintiffs,) Respondents.

No. 130.

*Appeal from the same decision.*

Sheo Dyal Singh, (Plaintiff,) Appellant,

*versus*

Chukurban Singh, Respondent.

SUIT laid at rupees 136-0-0, for damages done to crops, and to a mound (alung) by cutting the said mound so as to carry off the water retained by it, and to obtain an order for restraining the defendant from cutting the said mound in future contrary to immemorial usage.

The plaintiff denying any right in defendant to water his lands situate in Hubnachuk, a resumed aymia formerly part of the rukba of plaintiffs' village of At, with the water collected in the lands of At from the river Eetowa, declares that defendant had taken the water from the lands of Kita Koosaha appertaining to At, by cutting the northern mound of the said Kita. The defendant denies cutting the mound in question, but asserts his right to water the lands of Hubnachuk, according to long established usage, by a Pyne bounding Kita Koosaha on the western side Kita Koosaha being situated to the south of Hubnachuk. After the case had been remanded by the principal sudder ameen in appeal, the moonsiff has passed a decision to the following effect. It does not appear,

and indeed defendant himself denies that it has been the usage for the defendant to take the water from the lands of mouza At by cutting the northern mound (alung) of Kita Koosaha. Had such an usage prevailed, he is of opinion that damage would have been sustained by the crops of Kita Koosaha. No damage has been proved to have been sustained, nor is it likely that from once cutting the mound any damage would ensue. It is proper, he thinks, that Hubnachuk should be watered by the water supplying the parent estate, and the settlement roobukaree of Hubnachuk states that it was usually, in part, watered in that way; and it is possible that by a channel for the water marked on the map of the surveyor to the west of the Kita Koosaha, Hubnachuk may be supplied, he therefore, decrees against the defendant's right to take the water from the lands of At by cutting the northern alung of Kita Koosaha, and he adjudges the defendant to pay the costs on the adjudication of this right, and the plaintiff to pay the remainder. Both the parties are dissatisfied with this decision, and with reason. Its terms are by no means clear, and appear to be inconsistent and even conflicting one with another. The parties cannot be said to have been brought to a distinct issue, at least none has been decided. The moonsiff ought to have ascertained, before proceeding to decide the case, whether what defendant calls the Pyne westward of Koosaha, and by which he asserts Hubnachuk is irrigated, passes through the point where plaintiffs assert that the alung of Koosaha was cut, or through any other point in what plaintiffs describe as the northern alung of Kita Koosaha. If it does not, then any inquiry into whether it has been the custom for water to be taken to the lands of Hubnachuk by that way is irrelevant to the case, and it would be simply necessary to examine whether the breach in the alung complained of by plaintiffs, was made by the defendant or not, and, if it was, what damage was occasioned, and if it was not, as defendant does not assert a right to a passage for the water through it, it would be manifestly unjust to make him liable to the costs of establishing a right on the part of the plaintiffs which he had not denied. If, on questioning the vakeels of the parties and a second inspection by the moonsiff, if necessary, of the locality with the original survey maps of the surveyor as with the maps of the general rukba as the detailed field map, and the khusra explanatory of the latter, it appears the parties are fairly at issue, the defendant calling that the course of a Pyne which plaintiffs call the mound of Kita Koosaha, it will be necessary then to ascertain whether through the disputed point defendant has by ancient usage a right to carry the water from the lands of At to those of Hubnachuk or not, and whether plaintiffs have closed up the way by filling the Pyne or watercourse during the progress of the suit as alleged by defendant, or whether defendants not having the right, have taken the water by the way above described, cutting the mound, or whether any and what loss

has been occasioned to the plaintiffs. It does not appear that this has been the course pursued by the moonsiff. His inquiry is imperfect, and his decision defective, I therefore reverse his decision, and remand the suit for re-trial; in doing which the moonsiff will attend to the above directions with greater diligence than he has done to those of the principal sudder ameen, which he has not carried out in his decision now reversed. The value of the stamps used in both appeals will be refunded to the parties.

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## ZILLAH RAJSHAHYE.

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PRESENT: G. C. CHEAP, Esq., JUDGE.

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THE 1ST FEBRUARY 1851.

No. 51 of 1850.\*

*Appeal from a decision of Moulree Monjeeb-ul Rohman, Moonsiff of  
Beauleah, dated the 24th of January 1850.*

Panawoollah, guardian of Fukrooddeen, a minor son of Moonshy Ameerooddeen, deceased, and Fyzul Beebee, daughter of the deceased, (Defendants,) Appellants,

*versus*

Shah Soojad Ullee *alias* Baboor Ullee, (Plaintiff,) Respondent.

THE respondent in the case, sued to recover 74 rupees, 12 annas, 2 pies, alleged to be due on account of rent for certain lands in the occupancy of the minor, and for which Harroo Shekh, his former guardian, gave the plaintiff a kubooleut. The moonsiff decreed the claim. Against this decision the new guardian appeals, pleading that the late guardian had no business to give a kubooleut, as the minor's father had purchased the owkaff lands on which his dwelling stood. This plea, with reference to Dhanoo Kuloo's case, will not affect the decision, but at the request of the appellants' vakeels, they were allowed to give any explanation they had to make, as to how the court could, under Construction 1166, and the Mahomedan law, on which the construction entirely rests, recognize and upheld the sale of owkaff lands. An explanation has been given in to this effect, that the cutcherries and jail are partly erected on owkaff lands purchased and belonging to the durgah of Mukdood Shah Roopush. Be that as it may, the simple question for decision is, is the *kubooleut* a genuine one, and is a balance due thereon? This is no way denied, or refuted by the plea now brought forward. The moonsiff's decision, therefore, must be affirmed, and the appeal dismissed, without calling on the respondent to appear.

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THE 5TH FEBRUARY 1851.

No. 21 of 1850.

*Appeal from a decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 27th May 1850.*

Comul Kishen Ghose, (Defendant,) Appellant,

*versus*

Dhun Mundul, (Plaintiff,) Respondent.

A person, by name Kishendhun Biswas, got a decree against the respondent for Company's rupees 351, 6 annas, 8½ pies, and, taking out execution, an application was made by the moonsiff of Dhurumpoorah to the moonsiff of Bilmareah to sell the respondent's jotes and property. These the moonsiff sold through the ameen, the houses and trees in three lots, and the jotes (*eleven* in all) in one lot, for rupees 421. The respondent bringing this to the notice of the moonsiff of Dhurumpoorah he, on investigation, held the sale of the jotes in one lot to be informal and irregular, as no specification, with boundaries, were given of the jotes; nor was it stated whether they were mocrurree, or mourussec. This the moonsiff represented to the moonsiff of Bilmareah, who, coinciding in opinion, applied to this court, when the petitioner was allowed, *in formâ pauperis*, to sue to set aside the sale. Hence the suit, and the principal sudder ameen holding that the *ameen* had no right to sell the jotes at all, on *this ground*, set aside their sale to the appellant who has now appealed, and insists that the sale by the ameen was not illegal, and there was nothing irregular or informal in the sale. I fully concur with the moonsiff, that the sale of the jotes in one lot, was both informal and irregular: they are situate in four different villages, and of course have different boundaries, which ought to have been mentioned at the time of sale, and also, if the rent was fixed or fluctuating. On these grounds, I uphold the principal sudder ameen's decree, without going into the question of the legality of the sale by the acting ameen. I think, when reversing the sale, the principal sudder ameen should have directed a refund of the purchase money to the purchaser. He is saddled with *mesne* profits, and costs, and these, as he is still in possession, will have to be deducted from the amount paid in for the purchase of the jotes, when the respondent applies for execution of his decree. Interest on the *mesne* profits will also be exigible from the appellant, and who, again, if the other decree has been paid out of the money, will be entitled to interest from the decreeholder, or Kishendhun Biswas made a joint defendant, but who has not appealed. The appeal is therefore dismissed, with costs.

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THE 13TH FEBRUARY 1850.

No. 71 of 1850.

*Appeal from a decision of Mahomud Ulee, Moonsiff of Nattore, dated the 4th of March 1850.*

Hajee Paramanick and Sham Mullah, (Defendants,) Appellants,  
*versus*

Ramlochun Chuckerbutty, (Plaintiff,) Respondent.

THE respondent sued to recover rupees 62, being principal, and an equal amount as interest, due on a bond, dated 25th Poos 1246 B. S., executed by the defendants (present appellants) in favor of Bhajun Mundul and Mullamee, who again sold their interest in the bond to the respondent. Hajee pleaded that he did not reside at Kishenpore, when the bond bore date, and produced a pottah of the zemindars to prove he did not go there till 1248 B. S. This plea, as well as the pottah, the moonsiff rejected, as Hajee was then insane, and it was not likely such a document would *then* be given to him. He accordingly decreed for the plaintiff. Appellants deny having borrowed any money of Bhajun and Mullamee, and the former again insists he did not, when the bond was said to have been executed, reside at Kishenpore, though the place named below the signature to the bond would make it appear that he resided there. There is no endorsement on the bond, or any document (on record) to shew that it was transferred to the respondent, and that he could sue the appellants for the amount of the bond. The case must therefore be remanded to the moonsiff; *first*, to summon Bhajun and Mullamee, and to ascertain if they made over the bond to the respondent; *second*, for the moonsiff to depute the local ameen to inquire if the respondent Hajee did or did not reside at Behadurpore, in the month of Poos 1246 B. S. The value of the stamp on which the petition of appeal is written, will be returned to the appellants, and the usual order as regards costs. •

THE 13TH FEBRUARY 1851.

No. 76 of 1850.

*Appeal from a decision of Mr. A. DeLemos, Moonsiff of Shahzadpore, dated the 14th March 1850.*

Ruttun Gopal Bhadooree, (Plaintiff,) Appellant,

*versus*

Bukshey Mullah, Nuboo Khan, Unoop Paramanick, and Toofan  
 Mullah, (Defendants,) Respondents.

THE appellant sued to recover rupees 29, 1 anna, 10 pies. Twenty-five rupees, principal, and the remainder interest, alleged

to be due on a *joint* bond, dated the 2nd Assin 1254 B. S., given to him by the respondents. The moonsiff dismissed the suit, not crediting the testimony of two witnesses produced by the plaintiff, as they deposed that one Akool Sircar had written the bond, while it was proved by other witnesses, that Akool could neither read nor write, and demised *before* or *prior* to the date of the bond. The moonsiff farther added that the plaintiff appeared to have a spite against the defendants, as they (in a dispute regarding the village in which they resided) had sided with Eshan Chunder Bhadooree, who was at enmity with the plaintiff. Against this decision the appellant appeals, and insists on the justice of his claim, and that it has been proved by the witnesses examined. There were two other attesting witnesses to the bond, but these the appellant declined examining as they had been tampered with by the respondents, and appellants' vakeel says there will be no benefit in examining them now. After the *break down* about Akool Sircar, I do not see how this court can give credit to the two witnesses examined by the moonsiff, and the circumstance of *four* persons being sued jointly for a bond of so small an amount, raises a suspicion that the suit is a malicious one, and got up to annoy the defendants for some cause or other. The appeal is therefore dismissed, and the moonsiff's decision affirmed.

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THE 14TH FEBRUARY 1851.

No. 15 of 1849.

*Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 21st of April 1849.*

Rajah Hurrinder Narayun Roy and Bhyrub Inder Narayun Roy,  
(Defendants,) Appellants,

*versus*

Ramdhun Sandyal, after his death, Ishur Chunder Sandyal, his son,  
(Plaintiffs,) Respondents.

RAMDHUN SANDYAL, the father of the respondent, instituted this suit for possession of 418 beegahs, 3 cottahs of land, included in 12 mouzas, and their kismuts, in pergunnah Lushkerpore, the property of the two appellants. His claim rested on a pottah, dated so far back as the 2nd Chyte 1221 B. S., alleged to have been given to him by the late Rajah Juggut Narayun, adoptive father of Hurrinder Narayun Roy. In this pottah, the jumma of the lands included in the several mouzas and kismuts is fixed at Sicca rupees 151, 4 annas, 15½ gundahs. The principal sudder ameen having decreed for the plaintiff, upholding as genuine the pottah, the appellants have appealed jointly, and the question, and

only one raised, is the genuineness of the pottah, and, as I differ on this point entirely from the principal sudder ameen, it will be necessary to give in some detail my reasons for so doing.

In the first place, it would appear, Ramdhun Sandyal complained of ejectment to the collector of this zillah, and the suit was entertained under a letter written by orders of the Board of Revenue, dated the 29th of August 1837. He then claimed 52 beegahs, situated in mouzas Amhattee, Atbhat, Chougatchee, and Chundurpore, but the pottah then produced, and said to be given by Ranee Bhoobun Mye, being on plain paper, the collector dismissed the claim (with reference to Article 29, Schedule A, Regulation X. of 1829,) on the 22nd July 1846, and it is stated that the collector's orders were affirmed in appeal. The plaintiff then instituted a suit in the sudder ameen's court, but was nonsuited, as the defendant denied the pottah, or that he was in possession, and, therefore, he ought to have sued for the whole of the land included in the pottah, under Construction 577. (This is the *dictum* of the sudder ameen.) Hence the present suit instituted before the principal sudder ameen on the 21st February 1848, laid at rupees 4888, 14 annas, including *mesne* profits for 1253-54 B. S., when the principal sudder ameen decreed possession, and *mesne* profits for the period of dispossession.

As he upheld the pottah, without taking any evidence to its execution, the appeal was admitted on the 6th of May last, and the witnesses whose names were affixed to the pottah were summoned, both parties being directed to point them out, the respondent insisting they were under the influence of the appellants.

Edoo Sheikh was the only one that attended, and when examined before me on the 9th July last, could speak to nothing, and had never been at Benares, where, it was alleged, the pottah had been drawn up.

The respondents' vakeel then referred to the examination of two other witnesses, taken before the sudder ameen. The first, Hurree Nath Dutt, attests the pottah, and gives details regarding it which are quite surprising after the lapse of thirty years and more. He says it was drawn up by a Bengali sircar, or native of Bengal, attached to the rajah's service, and attested by witnesses, inhabitants of Bengal, who had accompanied the rajah to Benares.

Haradhun Paramanick, the other witness, also speaks to witnessing the execution of the pottah, but could not speak to the land included in it, nor could he write, and adds the plaintiff signed his name to the kubooleut given in return for the pottah.

Now, on such evidence, the court would not be warranted, I think, in adjudging a claim for rent on the pottah, much less upholding the pottah as a hereditary one, and fixing the rent in perpetuity. But when I find no mention made of the rajah's pottah in the original plaint, or first suit before the collector, and there is no mention

made of the lands being held in jote by the plaintiff, Ramdhun Sandyal, deceased, in the butwarra papers relating to pergunnah Lushkurpore, and which were prepared in 1228 B. S., (the originals having been called for and examined) it is quite impossible to say that the pottah was a genuine one, and I doubt much if it was drawn up before the 22nd July 1846, when the collector dismissed the suit on the ranee's pottah. The very paper it is drawn upon is suspicious, a dirty piece of Bengali fabric, which surely was not necessary when the transaction took place at Benares, where the best paper was to be had.

The appellants, or one of them at least, in the wujoohat, pleads that in consequence of the plaintiff's son, the present respondent, having given evidence for Ranee Bhoobun Mye, in a case between her and her adopted son, Hurrinder Narayun Roy, the pottah had been given to the former. I do not think the assertion, or averment, totally without foundation, as the late ranee, to her death, was opposed to her son, had very bad advisers about her, and who could persuade her to do any thing to thwart her son's interests.

One of the appellants, Bhyrub Inder Narayun, has since the hearing of the appeal (or papers connected with it) filed a petition, withdrawing from the appeal, as he had given the respondent some land in exchange for what he claimed, and had been decreed to him; and the respondents' vakeel, with reference to the Sudder Court's orders in the case of Gopal Loll petitioner, (page 668 of the Bengali Gazette for 1851) argues that this court cannot disturb the principal sudder ameen's decree. The cases, however, are not *semble*. Though joint appellants, the land claimed by the plaintiff was not held by them jointly, each having a *separate* share, under a regular butwarra made of the pergunnah, and in such case, the act of one can in no way bind the other, or tie up the hands of the court in disposing of the appeal still on the file. From what has been stated above, it will be seen what changes there have been made in the nature of the claim, and also of the parties, (Bhyrub Inder Narayun was not sued in the collectorate) and this getting one of the appellants to withdraw his appeal, is only a *ruse*, and quite in keeping with the rest. It therefore only remains for me to decree the appeal, and reverse the principal sudder ameen's, founded on a document *not proven*, and which there is every reason to suspect was a forgery, as it was never produced in any court till the 12th of December 1846, or nearly thirty-four years after it bore date. This decree will not alter, or affect any relinquishment of lands made by the appellant Bhyrub Inder Narayun Roy to the respondent, and which in fact, are not *all* at least included in the original plaint by his father. Bhyrub Inder Narayun will pay his own costs, and the respondent Hurrinder's costs in this court. The costs in the principal sudder ameen's court to be paid by the parties respectively.

THE 18TH FEBRUARY 1851.

No. 3 of 1848.

*Regular Suit.*

Meer Durbesh Ullee, Plaintiff,

*versus*

Hafez-ul-Nessa, widow of Meer Shumseer Ullee deceased, Abed-ul-Nessa, widow of Meer Emam Ullee deceased, and mother of Hosain Ullee, a minor, Moorad Ullee, Sajun Mundul, Soobanee Mundul, Saduk Mundul, Moolee Khan, Junghoo Khan, Khazeh Ullee *alias* Goohee, Rohmut Sircar, Ameer Sircar, Bungshee Biswas, Panchoo Mundul, Kullum Mundul, Jagheer Mundul, Asmut Khan, Tugroo Sheik, and Khepaee Khumaroo, Defendants.

THIS suit was instituted on the 31st of October 1848, and retained on the judge's file with reference to the orders of the Sudder Court *in re* the pauper's application made to that court, and directing the admission of the suit.

The plaintiff, as one of the sons of one Meer Shumseer Ullee, deceased, claims a one-third share of certain jotes in zillah Nuddeah, and this zillah, laying his suit with mesne profits, at rupces 10,645-12-0. None of the defendants have attended, including some made parties since the suit was instituted, in consequence of the death of the original defendants. After reading the plaint, the plaintiff's vakeels were asked what quantity of land was claimed by their client in the respective villages or mouzas, as without such specification, the court could not decree a *portion* of the whole. Both were, however, unable to answer the question, or give any reply, only that they had given boundaries in a separate furd, or *schedule* from the plaint. As from the circumstance of the suit being undefended, it is the more necessary the court should have full particulars of what quantity of land in each mouza is claimed; that there may be no mistake in decreeing the same, the plaintiff, from the omission of these particulars in his plaint, must be nonsuited, and all costs, relating to stamp fees, be realized from him, having sued as a pauper. The vakeels being entitled to one-fourth of the prescribed fees under Section 7, Act I. of 1846.

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THE 19TH FEBRUARY 1851.

No. 110 of 1850.

*Regular Suit.*

Kirpa Mye Dibbea, widow of Hurkaunt Roy, deceased, Plaintiff,  
*versus*

Raja Kishen Chunder, Kaleekaunt Lahoree, Shama Soondree  
Dibbea, and Ram Mohun Roy, Defendants.

A SUIT exactly similar to the present one was before instituted in the principal sudder ameen's court, who decreed for the plaintiff; but, in appeal, the claim was dismissed by the Sudder Dewanny Adawlut on the 16th of April last, (*vide* Sudder Decisions for 1850, from p. 112 to 117.) This suit therefore cannot be again entertained under the rules laid down in Section 16, Regulation III. of 1793.

Again, had not the suit been barred, under the law above stated, the court could not entertain the suit, as, before entering on the merits, it would have to *create* a title in a person, who had deceased before the institution of the suit, and to declare that he, Hurkaunt Roy, was the proprietor of the putnee talook, though the kuballah, or conveyance of the putnee, was in the name of Juggurnath. To do so would be, directly, to contradict the terms of the conveyance of the putnee brought to sale as the property of Juggurnath Roy.

The suit is therefore dismissed, without calling for any farther pleadings, and the plaintiff charged with all costs; but the vakeels of the parties will only receive one-fourth the prescribed fees under Section 7, Regulation I. of 1816.

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# ZILLAH RUNGPORE.

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PRESENT : T. WYATT, ESQ., JUDGE.

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THE 20TH FEBRUARY 1851.

No. 3 of 1849.

*Appeal from a decision of the Principal Sudder Ameen, dated the  
25th January 1849.*

Mussumnat Korana Moi Dibe and Mohes Chunder Roy, son of  
Anund Chunder Roy, (Defendants,) Appellants,

*versus*

Pertab Sing Dogar, (Plaintiff,) Respondent.

THIS suit was instituted by the respondent for the recovery, from the appellants and two other defendants in the suit, of the sum of rupees 1,113, annas 12, pie 9, krants 12, besides interest, as discharged by him on account of a decree of the 30th June 1841, for rupees 1,391, annas 13, pie 9, passed against him (respondent) and the other defendants, after deducting therefrom rupees 1,391, annas 13, pie 9, the portion of decree for which he was liable. The lower court, in an *ex parte* trial, decreed for rupees 968, anna 1, pie 6, with interest besides costs, against the appellants, being two of three shares of rupees 1391, annas 13, pie 9, before decreed, exclusive of interest, of which one was payable by the respondent, and the other two by these appellants: the other two defendants in the suit, at the request of the respondent, being released from liability.

On appeal, this decision of the lower court was considered unjust, on the grounds that, as the decree of the 30th June 1841 had been passed against five defendants, (including the respondent as one) the appellants, as two of those defendants, ought not to have been made liable for more than two-fifths of the amount then decreed, and that the other two defendants ought not to have been exempted from liability in the present suit.

On review of the proceedings, since it appears that the appellants wilfully neglected to attend the lower court under the Court's Circular of the 12th March 1841, the appeal must be dismissed. It is, therefore, so ordered, and the decision of the lower court of the 25th January 1849, is confirmed.

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THE 24TH FEBRUARY 1851.

No. 154 of 1849.

*Appeal from a decision of the Moonsiff of Oliporé, dated 9th  
November 1849.*

Mussummat Radamoney Dossea, (Defendant with others,) Appellant,

*versus*

Mussummat Kumla Dossea, widow of Bholanauth,  
(Plaintiff,) Respondent.

THIS suit was instituted by respondent to recover possession of a jote, with mesne profits from date of dispossession, sold by Khulleel and his three brothers to respondent, on the 9th Bhadoon 1255, which deed of sale, though lost by respondent, was admitted to have been given by the sellers in a petition to the magistrate, dated 12th Bhadoon 1255, though they complained of its having been taken by force, the evidence adduced in support of which complaint was discredited by the magistrate.

The respondent, in addition, alleged that the sellers had subsequently disposed of the disputed jote through fraud to the appellant, (one of the defendants) on the 27th Kartick 1255, for 50 rupees, whence the appellant was included in the suit.

It is merely urged on appeal that the appellant, being dissatisfied with the judgment of the moonsiff, prays that the appellate court will revise the proceedings of the lower court.

On a review of the proceedings, it does not appear that the moonsiff called upon Khulleel and his brothers (defendants) for proof as to the deed of sale of 9th Bhadoon 1255 B. S., in favor of the respondent having been forcibly taken from them, as stated in the fouzdarree before adverted to, and pleaded by them in their answer to the suit. This the moonsiff should have done, as, if proved, the document on which the plaint is based would be invalid.

Considering, therefore, the decision on this point to have been defective, I decree the appeal, with costs, reversing the order of the moonsiff to whom the case will be remanded for trial, and who will proceed, in re-investigating it, according to Act XV. of 1850, and Circular Order of the 8th May 1850.

The value of the stamp of appeal will be refunded to the appellant.

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THE 25TH FEBRUARY 1851.

No. 55 of 1850.

*Appeal from a decision of the Moonsiff of Bhotmaree, dated 25th March 1850.*

Kheir Mahomed, (Defendant,) Appellant,

*versus*

Shullea Sirkar, son of Goomaroo, (Plaintiff,) Respondent.

THIS was a suit on the part of the respondent for the recovery of 150 rupees, the value of three poties and two bissees of dhan, engaged to be delivered by the appellant (defendant) on 30th Pooos 1248 B. S., in re-payment of 50 rupees lent to the appellant by Goomaroo, (deceased) father of the plaintiff, according to a sutta, dated 15th Assin 1248 B. S.

The defendant denies the claim *in toto*, stating that the plaintiff, if his claim were just, should have included in his plaint all the heirs besides himself and Goomaroo whom, he (defendant) mentions, by leaving out, he wishes to defraud.

The moonsiff, after taking proof as to the sutta, and as to there being six heirs of Goomaroo, on a futwa of the law officer as to the proportion in which the personal property of Goomaroo should be decided, decreed the principal of the loan, viz., rupees 50, with interest rupees 49, total rupees 99, to be distributed among the heirs as follows. Of 96 shares, 34 to the plaintiff and 6 to Mussummat Nuzoo Bewa, mother of the plaintiff, charging the defendant with the costs and interests equal to this decree, and rendering payable, by the plaintiff, the excess of costs incurred by the defendant, and the costs of the other four heirs as uzurdars for having kept out of view their hereditary title to participate in the property.

It is urged on appeal that, owing to the irregularity of the plaintiff's suit in laying exclusive claim by inheritance to the property of Goomaroo deceased, while it is proved there are five other heirs entitled by law to share in the property, the plaintiff ought to have been nonsuited by the lower court.

The issues to be decided were first, whether the sutta was valid; second, whether, as set forth by the defendant, there were other heirs, independent of the plaintiff, to the personal property of plaintiff's father, Goomaroo; a matter which plaintiff was alleged to have concealed; and, third, if there were other heirs, whether the plaint was not liable to be nonsuited on the score of irregularity.

In the lower court, the first and second issues were established, and as to the third, I consider the plaint was irregularly instituted, and ought to be nonsuited. The plaintiff ought to have included in his suit the other heirs of his deceased parent Goomaroo, either as plaintiffs, or (if not ready to sue) as defendants. The moonsiff,

partially, decreed in favor of the plaintiff and his mother without the latter having been made a party to the suit, and he passed no order as to the distribution of the remaining property among the remaining heirs. For these reasons, I decree the appeal, with costs, nonsuited the plaintiff and reversing the decision of the moonsiff.

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THE 25TH FEBRUARY 1851.

No. 66 of 1850.

*Appeal from a decision of the Moonsiff of Bhotmaree, of 25th  
March 1850.*

Shullea Sirkar, (Plaintiff,) Appellant,

*versus*

Kheir Mahomed, (Defendant,) Respondent.

THE above only being a counter-appeal of the respondent in case No. 55 of 1850, above disposed of, the reasons for the decision passed in that case (55 of 1850,) equally apply to this appeal. This appeal is, therefore, dismissed, with costs, the original plaint nonsuited, and the decision of the moonsiff reversed.

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# ZILLAH SARUN.

PRESENT: H. V. HATHORN, Esq., JUDGE.

THE 17TH FEBRUARY 1851.

No. 80 of 1848.

*An original suit decided by H. V. Hathorn, Esq., Judge of Zillah Sarun,  
dated 10th February 1851.*

Khajeh Talib Ali Khan *alias* Khajeh Sultan Jan, Plaintiff,  
*versus*

Rajah Sahib Puhlad Sen, Defendant.

CLAIM, Company's rupees 76,000 principal, and Company's rupees 11,134, interest (from 7th March 1846 to 15th August 1848), total Company's rupees 87,134, on a bond, dated 7th March 1846.

This suit was instituted by plaintiff, (the eldest son of Khajeh Hosein Ali Khan, deceased,) on the 15th August 1848.

The bond was stated to have been executed by defendant at Meeton ghât, in the city of Patna, but the defendant being a resident of Sarun, the suit was instituted in this district. The bond sets forth that certain personal and court expenses being necessary, ("laboodée and durbarce") the defendant had taken a loan from plaintiff of Company's rupees 76,000, and had pledged (as security) his villages appertaining to the Raj Ramnugger, which he bound himself not to alienate until the aforesaid amount, principal with interest at 8 annas per cent. per mensem (or 6 rupees per cent. per annum), had been liquidated in full, and which he promised to effect in the month of Chyete 1254 Fusily, failing which, the plaintiff would be at liberty to realize the debt, with interest, from the aforesaid property.

The defendant admits the execution and registration of this bond, but urges that no adequate consideration was received. He recapitulates the manner in which the bill of sale for a fourth share of Raj Ramnugger had been previously taken from him (under date the 13th September 1844), by plaintiff's father, Khajeh Hosein Ali Khan, for the *nominal* consideration of Company's rupees 75,000, upon a promise that he, the Khajeh, would pay all the necessary expenses of the suit (then pending) to establish his claim to the Raj

Ramnugger; but that the father fled upon a charge of rebellion preferred against him by the Government, and had paid no expenses; upon which he applied to the son, (the plaintiff in this suit) who urged that his father's property was all under attachment, and the bill of sale of no use to him; but if he (the Rajah Puhlad Sen), would give him (Sultan Jan) a separate bond for that amount, pledging the *whole* of his property, he, Sultan Jan, would consent to pay the necessary law expenses &c., ("labooddee and durbaree") and accordingly he (the defendant) had been induced to come to this arrangement, but that plaintiff had not paid him a cowree of the money, either at once or by instalments, and had reduced him to the necessity of borrowing money elsewhere; and now he, plaintiff, comes forward with this suit to recover the amount of his bond for Company's rupees 76,000. The following reasons are further offered for disbelieving and rejecting the plaintiff's claim:

*First.*—That plaintiff was himself in debt, and had borrowed money from Bugwanlal, and, therefore, was not in a situation to lend so large a sum as 76,000 rupees to another person.

*Secondly.*—That it is usual to take loan from bankers or mohajuns, but such was not done in this case.

*Thirdly.*—That it may be inferred, from the terms of the bond, that no consideration was given, and the claim is, therefore, inadmissible.

*Fourthly.*—That at the time of executing the bond, the suit for his property (the Raj Ramnugger) was *pending* in appeal before the Sudder Dewanny Adawlut, how then could he, plaintiff, be justified in pledging that which was not his own?

*Fifthly.*—That the plaintiff had in fact added Company's rupees 1,000, to the purchase-money for one-fourth of the estate, which he had previously agreed to sell for rupees 75,000, and had exacted a separate bond for the aggregate amount of Company's rupees 76,000 in lieu of purchase-money, but which he had not received.

*Sixthly.*—It is remarked that if plaintiff had previously sold outright a *fourth* share of his property for rupees 75,000, how could he afterwards pledge his *entire* estate for the further sum of Company's rupees 76,000?

*In reply*, the plaintiff refers to the defendant's previous admissions in court, in regard to the sale of one-fourth of the Raj to his father, and, therefore, plaintiff's plea of not having received the purchase-money was useless; that in point of fact the two transactions were separate and distinct, and that the defendant had taken from him, the plaintiff, the full amount of this bond, viz. rupees 76,000, in cash, and in one payment; that he had made over the bond to him, the plaintiff, and had caused it to be registered, and that its execution was not only admitted, but would be clearly proved by evidence, and that the insertion of the words "labooddee and

durbaree" in the bond (indicating the necessity of borrowing,) did not prove that the money had not been taken in cash.

No *rejoinder* is added, but an *amended* answer is filed, stating that the Khajeh had previously taken from him a bond for Company's rupees 35,000, dated 17th June 1845, which was the estimate of the expenses for conducting the suit for the Raj Ramnugger, and that the Khajeh gave him in return a note-of-hand promising not to demand interest until he should obtain possession, and that, on applying to the son to fulfil his father's engagement, this bond for Company's rupees 76,000 was taken, and the bond for Company's rupees 35,000 returned, but that he had obtained no adequate consideration for *either*, and that both this bond and the bill were based upon an illegal transaction, viz. "champerty."

The plaintiff replies to this, urging that there is no illegality whatever in the proceeding, and repeating that the expenses of the suit were not defrayed by him or his father, and that this transaction is totally unconnected with the bill of sale, and that the loan was given at once, and in cash.

The parties were severally called upon in the principal sudder ameen's court to substantiate their respective allegations, under the provisions of Section 10, Regulation XXVI. of 1814.

The plaintiff, out of eight (8) witnesses to the bond, has produced *three* only, representing that two others are not to be found, and the remaining three are deceased. Five witnesses have given evidence to their knowledge of the circumstances of the case, and two to the fact of subsequent demand. Plaintiff also presents copy of defendant's petition filed in the principal sudder ameen's court for execution of his decree, which admits the transfer by sale of 4 annas to the Khajeh Husein Ali Khan, after the decree had passed in the principal sudder ameen's court.

The defendant has cited five witnesses to disprove the payment of any consideration at the time when the bond was executed, and in support of certain monthly allowances and current expenses paid by plaintiff after the execution of the bond, and when the defendant's suit for Raj Ramnugger was pending before the Sudder Dewanny Adawlut. I proceed to consider the allegations and proofs adduced in support and in refutation of this claim.

#### JUDGMENT.

The defendant admits the execution of this bond, but pleads, amongst other objections, that no adequate consideration was received, whilst plaintiff avers that the latter was paid down in cash, and at once, when the bond was executed. It is, therefore, necessary to consider, first, this main point at issue, whether the amount stated in the bond was actually paid or not.

It has been already held by this court (27th December 1850) that the amount purchase-money (viz. Company's rupees 75,000)

for the sale of a fourth share of the Raj Ramnugger to Khajeh Hosein Ali Khan, was not paid by defendant or his father, and the claim for possession has, therefore, been thrown out. The alleged bill of sale alluded to was dated 23rd September 1844. This bond bears date the 7th March 1846, at a time when the suit of Pahlad Srin, for possession of the Raj was pending in appeal before the Sudder Dewanny Adawlut.

#### *Dates.*

Decree of principal sudder ameen, dated 27th February 1845.

— of Sudder Dewanny Adawlut, dated 9th September 1846.

The following is a brief abstract of the evidence of the witnesses cited by plaintiff to the execution of this bond, and to payment of the amount in full.

These witnesses give both the precise English date of the transaction, and the corresponding Hijeree date, and the time of day and place, and particularize with accuracy the number of bags, the amount of each, and how they were brought by one set of people, and taken away by another, and the conversation which ensued between the parties and the value of the several sheets (three in number) on which the bond was engrossed. They even remember the witnesses, who signed in "Hindee," and those who signed in "Persian," and name the man who affixed the raja's seal to the documents. The evidence of these witnesses was taken on the 13th and 20th January 1849, and the transaction to which they testify, occurred on the 7th March 1846, being 2 years and 10 months antecedent. Now it is clear that the memories of these witnesses must either be wonderfully retentive, or that their recollections must have been recently *refreshed*, to enable them to speak of details with such remarkable precision and accuracy; their testimony could scarcely be more perfect than it is in every minute coincident; but evidence, I apprehend, may be *too perfect*, and after such lapse of time naturally creates suspicion; or without very recent *refreshing*, this concordance, in regard to dates in different eras, the number of bags, the amount in each, even the number of sheets of stamp paper on which the bond was engrossed, and the conversation which took place, seems almost impossible. The only inference to be drawn is that these witnesses must have been tutored: their evidence is thus materially weakened in my estimation, and my confidence in its trustworthiness considerably shaken. The *execution* of the bond is however admitted by defendant. The material point, therefore, to ascertain is, whether the consideration was actually paid down at the time, as averred by defendant, or subsequently liquidated, either in whole or in part.

From the whole tenor of this case, taken in connection with the previously alleged transfer of one-fourth of the estate for the sum of 75,000 rupees said to have taken place 18 months previously, I am inclined to the opinion set forth by the defendant, that the plaintiff's

father, Khajeh Hosein Ali Khan, on behalf of Puhlad Sein, at first agreed to bear the expenses of the suit whilst pending in the zillah courts, and took a bill of sale for one-fourth share of the estate in litigation of one period, and a bond for 35,000 at another; and, afterwards, his son (the plaintiff) when applied to carry him, the plaintiff, through the Sudder Court, at a time when the father was in difficulty, took advantage of the man's imbecility, and demanded a fresh bond from Saheb Puhlad Sein in plaintiff's *own name*, giving a promise that he would pay the necessary expenses of the suit in appeal, and which for a time were so paid by plaintiff; but I firmly believe that no money was actually paid down at the time of executing the bond, as set forth by plaintiff, or that the full amount of the bond was ever realized by plaintiff.

If, as stated by plaintiff in this and the former suit, 75,000 Co.'s rupees was the amount consideration actually paid for the bill of sale, and Company's rupees 76,000, for this bond, (taken only 18 months afterwards,) it is clear that the defendant must have been put in possession of cash to the amount of Company's rupees 1,51,000, (independent of the bond for Company's rupees 35,000 said by defendant to have been returned, but declared by plaintiff to have been *lost*, and mysteriously found by plaintiff.) Now it is beyond all grounds of probability to suppose that so large a sum could have been *required* to conduct this one suit through the courts even supposing that the defendant had been most liberal in his donations to those who may have assisted him in conducting the case to a final termination.

Again, there is no evidence that this large sum of money was brought from any banker's house, and the Khajeh himself, it is known, was no banker, and was not likely, as a private individual, to have so large a sum in *cash* in his private dwelling-house at Patna.

Farther, if it be true that the amount of this bond was paid to Saheb Puhlad Sein, in March 1846, how is it that small sums of money were immediately afterwards paid to the raja on demand, viz., 500 rupees, and after ten days, 150 rupees more, and a promise to pay the three mooktars (employed by the raja,) at the rate of 25 rupees each per mensem, and which payment is said to have continued for some months; and, again, upon obtaining a decree, the plaintiff, it is stated, sent another 1,000 rupees to the raja to be distributed among his people upon receiving intelligence that he had won his cause. Bulbudhur Opadea and Mohunt Bulramdas, and Wazeer Ali, and Jhouklal, and Joiram Sing have sworn to these subsequent payments.

Taking these various points into consideration, I am forced to believe that the witnesses, who have testified to the payment of the 76,000 rupees *in their presence*, have been tampered with, and



I feel satisfied that no adequate consideration for this bond has been given; and the assertion made that the full amount was paid down *in cash at the time of executing* the deed, I consider to be altogether unworthy of credit. For these reasons, I reject this claim.

ORDERED,

That this suit be dismissed, with full costs, to be liquidated by plaintiff.

THE 17TH FEBRUARY 1851.

Nos. 1 and 2 of 1848.

*A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Ex-Officio Sudder Ameer of Sarun, dated 11th January 1848.*

Musst. Pootlee Koer and Musst. Kunchun Koer, (Defendants,) Appellants,

versus

Sheikh Abraham and Moula Buksh Khan, (Plaintiffs,) Respondents.

CLAIM, Company's rupees 711-8-2-8, being the profits (principal and interest) of a farming engagement from 1249 to 1251 Fussily, of the villages Ekdurwa and Pithource, pergunnah Sepore.

This suit was instituted by plaintiffs, on the 21st August 1845, setting forth that they had taken in farm the defendants' half share in the above villages at a yearly rental of Company's rupees 471, for the years 1249 to 1251 Fussily; and after paying rent for 1247 and 1248 Fussily had been dispossessed (viz. in 1249); and estimating the gross collections at Company's rupees 662-6-0-16, claim from the maliks the excess profits on the farm from 1249 to 1251 Fussily, inclusive, with interest after deducting their annual rent, thus

	<i>In 1249.</i>				<i>In 1250.</i>				<i>In 1251.</i>			
	A.	P.	K.		A.	P.	K.		A.	P.	K.	
Co.'s Rs. ...	662	6	0	16	191	6	0	16	191	6	0	16
Deduct rent, 471	0	0	0	0	Int. 45	12	8	0	22	14	4	16
	191	6	0	16	237	2	8	16	214	4	4	16
Add interest, 68	11	0	0	0								
Total...	260	1	0	16								

making a total of Company's rupees 711-8-2-8.

Defendants (the maliks) pleaded that the farmers had fallen into arrears in 1247-48 Fussily, and that they had exercised their legal right to resume, and had appointed a sazawul to collect the rents for 1249 Fussily; and, in 1250, had taken an advance of Company's rupees 600 from Sahibram Putwarry and placed him in possession.

A third party, Chutterpan Misser, disputed the right of the maliks to *alienate* the property, (as he styled it,) representing that under a decree of court, they, the defendants, had only a life interest; but a simple lease on advance from year to year cannot be regarded as a mortgage or conditional sale which might lead to the alienation of proprietary right.

The sudder ameen, after drawing the issues of this case, and calling upon the parties for their respective proofs, deputed an ameen to make local investigation, when it was found by evidence taken on the spot, that the rental of the two villages, amounting to Company's rupees 1156, or Company's rupees 578, on account of defendants' half share; and, it further appeared, that 205 rupees had been realized by plaintiffs in Assin 1249 Fussily. The balance in favor of plaintiffs therefore stood thus—

	1249 F.	1250.	1251.	
$\frac{1}{2}$ Collections,...	578	Ditto,	Ditto,	Deduct realized by Plaintiffs in 1249 F.
Farmer's rent, ...	471	Ditto,	Ditto,	
Excess <i>Profit</i> ,...	107	107	107	321—205 = 116 0 0
Add <i>Interest</i> ,...	0 2 2	9 11 15	5	= 14 2 2
Total,...				130 2 2

The sudder ameen accordingly decreed this reduced balance to plaintiffs, with costs in proportion.

Both parties have appealed in this case: plaintiffs urging that the item of 205 rupees was not realized, and should not have been deducted, and the defendants maintaining that they were justified in ousting their defaulting farmers.

#### JUDGMENT.

I observe that the separate suit of the maliks for the recovery of the arrears of this farm for 1247, 1248 and 1249 Fussily, has been dismissed, and I think justly, on the ground that the maliks had previously sued summarily to recover the balance of 1247 Fussily, and failed then, as they do now, to establish that any arrears were due. Two receipts for the full rent were filed and proved, and the farmers' acquittances for the rent of 1248 Fussily have been duly authenticated in the lower court. Thus the default of the farmers in 1247 and 1248 Fussily not having been established, the proprietors were not at liberty to cancel the lease *before* the expiration of the term, and the farmers are, therefore, entitled to the profits from that year 1249 Fussily to the end of their lease, viz., to 1251 Fussily, which the sudder ameen has awarded. The realization of Company's

rupees 205, by the farmers in 1249 Fussily, is proved. Indeed, plaintiffs admit collecting that sum in 1249 Fussily, but plead having carried it to the credit of the *preceding* year. This does not appear to have been the case. For the above reasons it is

ORDERED,

That the appeals (Nos. 1 and 2) in these two cases, from the sudder ameen's court, be dismissed, with costs, and the decision of the lower court be affirmed.

THE 17TH FEBRUARY 1851.

No. 2 of 1848.

*A Regular Appeal from a decision passed by Moulree Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 11th January 1848.*

Musst. Pootlee Koer and Musst. Kunchun Koer, (Plaintiffs),  
Appellants,  
*versus*

Sheik Ibrahim and Moula Buksh Khan, (Defendants,) Respondents.

CLAIM, Company's rupees 1552, 6 annas, 3 pies, being the principal and interest on account of arrears of rent in 1247, 1248 and 1249 Fussily.

This suit was instituted on the 17th December 1845. Plaintiffs, the maliks of a half share of mouzas Ekdurwa and Pithouree, pergunnah Sipore, claimed their share of rent from 1247 to 1249 Fussily, inclusive, at the rate of Company's rupees 471 per annum, with interest as per account.

The defendants pleaded payment in full, and submitted a summary decree in their favor on account of the year 1247 Fussily, and produced an acquittance for the year 1248 Fussily, which latter was proved by witnesses in the lower court. The principal sudder ameen has accordingly dismissed this claim. In dissatisfaction, plaintiffs appeal; but I find no sufficient reason to interfere. I have to observe, independent of the grounds stated by the principal sudder ameen in his decision, that if the arrears for 1247 Fussily had not been liquidated in full, the proprietors would not probably have granted an acquittance for the following year; for it is usual to carry all payments of rent, in the first instance, to the credit of *arrears*, and, afterwards, to the liquidation of *current dues*; and, moreover, I observe that receipts for 455 rupees and 45 rupees, on account of rent for 1247 Fussily, were filed in the summary suit case, and authenticated; and respecting the arrears for 1249 Fussily, an ameen who was deputed to make local inquiry, found that defendants had been *dispossessed*, as pleaded on the 15th Assin 1249 Fussily, and the amount stated to have been collected by the farmers in that year, viz., 205 rupees, has been duly credited to the malik's account, (*vide* preceding case.)

This counter claim of the maliks, appears to have been instituted for the sole purpose of getting rid of the farmers in possession, and to cancel their lease, and to give possession to *Sahibram* from whom they had taken a pecuniary advance; for I observe, that it was not instituted until *four months after the farmers had sued them* for loss sustained by being thus dispossessed before the expiration of their lease; or otherwise, *why did they delay for five years* in prosecuting the farmers after their summary suit for rent had been dismissed as groundless?

For the above reasons, it is ordered that this appeal No. 1 from the principal sudder ameen's court be dismissed, with costs, and the decision of the lower court be affirmed.

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THE 22ND FEBRUARY 1851.

No. 1 of 1849.\*

*A Regular Appeal from a decision passed by the Acting Collector of Sarun, dated 28th August 1849.*

Maharajah Newul Kishwur Singh, (Plaintiff,) Appellant,

*versus*

Tilukdharry Tewarry and others, (Defendants,) Respondents.

CLAIM. for resumption and assessment of 91 beegahs of land in Rampoor Chup-Kerya, pergunnah Mujhowrah, valued at Company's rupees 1638.

Plaintiff as the settlement proprietor of the village, has sued for the resumption and assessment of this land, and which had been relinquished by Government, under Regulation II. of 1819, (being under 100 beegahs) by an order of the deputy collector, dated 10th February 1838.

Defendants pleaded that the land was rent-free by a *grant* obtained by his progenitor Nagmunnee Tewarry from Joogul Kishwur Singh, plaintiff's grandfather, dated 8th Poos 1179 Fussily, (1772) previous to the settlement made with plaintiff's ancestors, and as such was not liable to resumption by plaintiff; observing also that it was situated in tuppeh *Sukma*, and not tuppeh *Sunwa*, as stated by plaintiff, and having been deducted from the estate at the time of the Government settlement, plaintiff was not entitled to the revenue.

The acting collector (Mr. F. B. Kemp) after requiring a report from his record keeper in regard to this land, held a proceeding, on the 28th July 1849, calling upon the parties respectively to submit within a month their proofs, viz., the plaintiff was required to prove that the land was included in his estate, and was liable to resumption, and in what tuppeh it was situated, and defendant was to produce his sunnud and proof of possession, since the original grant to the period of its relinquishment under Regulation II. of 1819.

On the 24th August 1849, the officiating collector brought up the case and, adverting to his former proceeding, observed that the plaintiff had failed to submit any proofs in support of his claim, notwithstanding that a month had been allowed for that purpose, and accordingly dismissed the suit, with full costs.

Plaintiff appeals in dissatisfaction, urging that the collector's proceedings are informal; that he should in the first instance have called upon the defendants to file their proofs, and then allowed him (the plaintiff) another *week* to enable him to reply before disposing of the case thus summarily.

#### JUDGMENT.

The plea is good, and this suit must be returned to the collector for re-trial and decision, with reference to Clauses 2 and 3, Section 30, Regulation II. of 1819. The collector, according to the law above cited, should have required the defendant to attend in person or by vakeel within the *period of one month*, and to produce his proofs in support of possession, and his claim to hold free of assessment, and after allowing the claimant to inspect and examine them, should have been called upon him to *deliver, within the period of seven days*, a full statement of the grounds on which, with reference to the documents, he might consider the tenure of the defendant invalid, and the land liable to assessment; and afterwards proceeded to investigate the case, and record his final judgment. The *onus probandi*, in such cases, clearly falls upon the defendant in the first instance, but this suit has been struck off the file upon the alleged default of plaintiff and *within* the period prescribed by law, and *without* any proofs having been filed by defendant in support of his claim to hold rent-free.

#### ORDERED,

That the proceedings of the collector of Sarun in this case be annulled, and returned in order that he may proceed according to law. The costs of suit to be awarded on the final determination of the case. The value of the stamp on the petition of appeal to be refunded.

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THE 22ND FEBRUARY 1851.

No. 2 of 1849.

*A Regular Appeal from a decision passed by the Acting Collector of Sarun, dated 4th December 1849.*

Sheik Izhar Hosein, guardian of Furrhut Hosein, minor son of Khurshed Hosein, deceased, (Plaintiff,) Appellant,

*versus*

Kheiratee, son of Bechon Khan, (Defendant,) Respondent.

CLAIM, for resumption and assessment of 1 beegah, 10 doors and 10 doorkees, on account of plaintiff's share in Rahempoor-delia, pergunnah Mangee; valuation Company's rupees 63.

This suit was instituted before the collector under Section 30, Regulation II. of 1819, 12 annas of this estate which formerly belonged to Hosein Ali, Shujait Ali, and Bebee Meena, &c. (heirs of Shahamut Ali Khan) had been mortgaged to Khurshed Hosein, Kashinath Saho, and More Saho, and for which they afterwards obtained a decree of court for possession; but, subsequently, the share of Bebee Meena, (the widow of Nusrut Ali Khan) was sold in execution of a decree of court, leaving 8 annas only in possession of the mortgagees. The share of plaintiff is set forth in the plaint at 3 annas 4 pie, Kashinath at 2 annas 8 pie, and More Saho at 2 annas, and plaintiff sues for resumption and assessment of 1 beegah in possession of defendant, corresponding with his fractional share, (3 annas 4 pie).

The collector has dismissed the suit in the absence of defendant, (who was not to be found) upon the ground that the property is joint and undivided, and a decree could not pass in regard to plaintiff's alleged share; that it was incumbent upon the plaintiff, first, to apply for a partition of his share, and, afterwards, bring forward this claim for resumption.

#### . JUDGMENT.

It appears to me that the collector has mistaken the nature of the case before him. The only question for the collector to decide was the validity or otherwise of the alleged rent-free tenure, and not the amount assessable thereon, or the amount payable to each co-partner. The plaintiff, moreover, has set forth in his plaint the extent of his share, and which has not been disputed, and plaintiff as a co-sharer in a joint undivided estate is, therefore, entitled to have this point (quoad the validity of defendant holding rent-free) adjudicated. The amount of rent due to each co-sharer is not at present at issue. The collector's inquiry must necessarily be restricted to the right to resume, and no injury to the absent co-sharers can possibly arise by such inquiry as they are no parties to this suit.

## ORDERED,

That the proceedings in this case be returned to the collector for trial *de novo*, and his decision, dated 4th December 1849, be annulled. The costs of suit to be adjudged on the final decision of the case. Appellant will receive back the value of the stamp on his petition of appeal.

THE 22ND FEBRUARY 1851.

No. 5 of 1848.

*A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 14th January 1848.*

Shah Ibrahim Ali *alias* Shah Soopun, (Plaintiff,) Appellant,  
*versus*

1, Musst. Sheobirt Koer, (widow of Puddomlal) 2, Musst. Bissummer Koer, (widow of Anooragee Lal,) 3, Sheik Kheiroodeen, 4, Ki-roder Lal, 5, Manorut Tewarry for self (and guardian of, 6, Nukched Tewarry, a minor son,) 7, Kem Miser, and 8, Sillount Lal, (brother of Puddum Lal,) (Defendants,) Respondents.

CLAIM, for possession of the entire village chuck Pursoram, pergunnah Bareh, with mesne profits, from 1245 to 1252 Fusly, total valuation, Company's rupees 1548-3-10-13-16.

This suit was instituted on the 11th November 1845. Plaintiff sets forth, that his brother Sha Raheembuksh, on the 11th Bysack

Munnoo—Bechon (widow)			1223 Fussily, (23rd
Raheem Buksh—Ibrahim Ali—Kurreeam   Ismail			October 1816) sold
(Plaintiff) Buksh   <i>alias</i>			this village to him
			for Sicca rupees
			250, and that he
			was in uninter-
			rupted possession
			until 1245 Fussily,
Musst. Sabeeron Wullee			
(wife) (son.)			

(1837-38 A. D.) when he was dispossessed by defendants, and the cultivators who had leagued with them. He adds, in support of his claim, that he has occasionally brought actions against the cultivators for arrears of rent, and had under-let the village to one Ghoorbaree, who, in like manner, had realized the rents by suits in court, and that one Naraindas (a mahajun) had sued him for money lent to pay the revenue of this estate, and had obtained a decree; and, furthermore, that his mother, Musst. Bechon, upon the death of his father, brought an action against him and others for her share of the heritable property of her deceased husband, and the said Raheembuksh, (her son;) and had obtained a decree for her one-sixth share or 34 sahamas out of 216 sahamas, under date the 16th May 1838, in which decree this village had been specially

exempted, as not then appertaining to the estate of Raheembuksh (by whom it was acquired,) and that the objections taken by Puddum Lal and Anooragee Lal, as having purchased the village from Musst. Sabiron and Sha Wullec, the widow, and son of Raheembuksh, is void of truth, praying for possession, with mesne profits from the period of dispossession.

The suit has been defended by Puddum Lal, who, before his death, stated that he and Anooragee had purchased the village from the widow and son aforesaid, on the 2nd August 1828, for Sicca rupees 1000, and that they had re-sold it to Kheiroodeen Hosein and Kheroder Lal, and the latter had sold 4 annas to Manorut Tewariy; observing that this suit has been instituted 17 years after the date of their bill of sale, and is *not, therefore, cognizable* under Section 14, Regulation III. of 1793, and Clause 1, Section 3, Regulation II. of 1805, referring to receipts in their possession for revenue paid from 1236 to 1238 Fussily.

Kheiroodeen and Kherodur Lal, in like manner, confirm the above statement in regard to their purchase from Puddum Lal and Anooragee Lal, and Manorut corroborates the fact of his purchase of 4 annas from Khirodur.

Plaintiff, in reply, maintains that, calculating from the date of Musst. Bechon's decree, (16th May 1838) he is within the time prescribed by law, and the suit is, therefore, legally cognizable.

The principal sudder ameen, on the 8th February 1847, drew the issues of this case, and called upon the parties for their proofs in support of their respective allegations, which having been filed, the principal sudder ameen observes that plaintiff has adduced no proof of possession up to 1245 Fussily, the alleged period of being dispossessed, except what may be inferred from Musst. Bechon's case, which is insufficient to render this suit cognizable; as the point at issue in that case was the right of the widow to succeed, generally, to her share of her late husband's and son's heritable property, and, moreover, the four witnesses cited by Kheiroodeen Hosein, &c., proved possession of the shares purchased by them up to the present time. The claim was, therefore, considered barred by the law of limitations, and has been accordingly dismissed by the principal sudder ameen, with costs.

#### JUDGMENT.

This suit having been dismissed by the lower court under the *law of limitation*, and plaintiff having appealed in dissatisfaction, this point alone has to be considered. I find that Raheembuksh died in February 1828, (10th Srabun 1235 Fussily,) and the claim of Musst. Bechon, the mother, for her share of her husband's and son's property was instituted on the 24th February 1829, and Shah Ibrahim Ali, the present plaintiff, was a defendant in that suit, along with the other heirs of Shah Munnoo. Plaintiff, in defending that suit, pointed-



ly *alluded to his purchase of chuk Pursoram* in refutation of the widow's claim for one-fifth of the whole heritable property *including this village*, and Puddum Lal, and Anooragee Lal (who appeared as third parties,) maintained that they had purchased the village from Raheembuksh's widow and son. Here the point was prominently at issue, *for the first time*, and the case of Musst. Bechon was not finally decided by the appellate court until the 16th May 1838, when the judge (Mr. Udny) *exempted this village* (and some miscellaneous land in mouza Raza pergunnah Cherand) upon the ground that it was not proved to be part of the heritable property of Raheembuksh, and awarded the widow her one-sixth share in the remaining property, leaving the mooted point of proprietary right in chuk Pursoram an open question.

It is true that the application of Ibrahim Ali for the registration of his name in the collector's office was made in 1816, at the time of purchase, and was left undisposed of until the 26th June 1832, when the collector recorded as his reason for striking the case off the file, "that the petitioner (Ibrahim Ali) had failed to support his application by any evidence;" but it does not appear there was any *cause of action* at that time, as *none of the defendants opposed* the plaintiff's application for a mutation of names. I think, therefore, that the date of the judge's decree (16th May 1838,) exempting this village from the award to the widow Bechon (in which case both parties, apparently, for the first time, formally appeared at issue, and claimed this village by purchase) should be taken as the date for applying the law of limitation, and which (to the date of suit, 11th November 1845) would bring it *within* the stipulated period of 12 years.

The plaintiff's claim, moreover, as compared with defendant's history, as to the mode of acquiring this village, rests upon very strong grounds, (although rejected by the principal sudder ameen as insufficient.) I observe from the report of the collectorate muhafiz bearing the collector's order, dated 26th June 1832, that *Raheembuksh himself* in 1223 Fussily (1816) presented a petition for the mutation of plaintiff's (Ibrahim Ali) name, as proprietor of chuk Pursoram by purchase. Again, Raheembuksh (the seller) in his "answer" filed in Wullee Mahomed's case, dated 21st April 1819, again *admitted the sale* of this village to plaintiff. Furthermore, in Musst. Bechon's case, she, the mother, (through her pleader) when interrogated as to this sale, *acknowledged its validity*. On the other hand, the alleged sale of this village by the widow and son of Raheembuksh (a lad of 19 years of age) transferring the property into the hands of strangers, six months only after the death of Raheembuksh, is somewhat suspicious. I observe that neither bills of sale is registered, but both bear the kazee's seal and attestation. The proofs, however, of *subsequent possession* already submitted by either party are not very satisfactory, and this material point might cer-

tainly be ascertained by careful investigation and inquiry. As yet the proofs seem rather in favor of plaintiff, as we have the *repeated declaration and acknowledgment* of the *seller himself* (Raheembuksh.) I, therefore, return this case to the principal sudder ameen for re-consideration, and decision, deeming the suit admissible.

#### ORDERED,

That this appeal be decreed, and the decision of the lower court be annulled, and the suit be sent back for re-trial. The appellant is entitled to a refund of the institution fee. The whole costs of suit to be adjudged by the principal sudder ameen on the final decision of the case.

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THE 27<sup>TH</sup> FEBRUARY 1851.

No. 3 of 1848.

*A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Ex-Officio Sudder Ameen of Sarun, dated 20th January 1841.*

Musst. Rutton Koer, for self, and as guardian of Gungapershad Singh *alias* Ghaseeton Singh, minor son of Jobraj Singh, deceased (Defendant,) Appellant,

*versus*

Moteclal, (Plaintiff,) Respondent.

CLAIM, Company's rupees 924-12, being the principal and interest of an advance on lease, dated 23rd Assar 1233 Fussily.

This suit was instituted on the 25th July 1846. It appeared from the plaint that Jobraj Singh, for himself, and in the capacity of guardian to his minor brother, Rajkoomar Singh, along with Maharaj Singh, another brother, conjointly took an advance of Sicca rupees 1300 from plaintiff, and executed a farming lease of 3 annas 6 pie, in mouza Syedpore, pergunnah Mahair, in plaintiff's favor. The stipulation being that the advance was to be repaid at once at the end of 1238 Fussily, or the lease was to continue until the loan was discharged, in one payment, at the termination of any subsequent year. The farmer (plaintiff) was required on his part to pay to the maliks annually a rental of Sicca rupees 66, and was to take the whole of the remaining rents as profits on his advance, and in payment of the expenses of the farm. Subsequently, viz., on 13th September 1832, Maharaj is stated to have sold his proprietary right in his one-third share to Heralal, the plaintiff's younger brother, for Sicca rupees 1900, and, in like manner, Jobraj Singh is represented to have sold his one-third share to Oocheylal, plaintiff's grand-father, for Sicca rupees 1940, under date the 25th June 1833, deducting his one-third share of the advance on 433 rupees, 5 annas, 6 pie, in part payment of the purchase money. It farther appears that on Rajkoomar coming of age, in 1234 Fussily, and

assuming charge of his own personal right, he mortgaged his third share to Chuttrolal (plaintiff's brother-in-law) for a certain time, which not being redeemed, the latter sued, and obtained a decree against Rajkoomar which rendered the sale to Chuttrolal absolute. It is farther stated that Chuttrolal re-sold this said share to plaintiff, who with his brother and grand-father, have thus become the proprietors of the whole 3 annas 6 pie share.

Plaintiff now sues the heirs of Jobraj Singh for his one-third share (or Company's rupees 433-5-6) of the original advance made to Jobraj Singh, viz., of Sicca rupees 1300, with a corresponding amount of interest, and rupees 58, on account of exchange, total Company's rupees 924-11. The interest is claimed from date of dispossession, 2nd Assar 1243 Fussily, viz., when Chuttrolal in execution of his decree against Rajkoomar took possession and ejected the plaintiff.

Defendant urges, in defence, that Chuttrolal is responsible for this claim, having succeeded to the rights and interest of Rajkoomar Singh in the said village, and that Rajkoomar, on coming of age, brought an action against his brother Jobraj and the Government for the recovery of his property improperly alienated during his minority, and which suit was dismissed, and that Chuttrolal is a relation of plaintiff, and they had conspired in this case to suit their own purposes and to injure the defendant.

The reply recapitulates the averments in the plaint declaring the heirs of Jobraj Singh to be justly responsible for this loan taken by him on behalf of Rajkoomar Singh, in the capacity of guardian.

The sudder ameen in his proceeding, dated 29th July 1847, held under Section 10, Regulation XXVI. of 1814, set forth the points at issue to be proved by each party respectively. Plaintiff was to prove, viz., the fact of dispossession by the decreeholder Chuttrolal, and the responsibility of the heirs of Jobraj Singh for one-third of the advance made by plaintiff, and defendants were to show the liability of Chuttrolal for this portion of the loan. Accordingly plaintiff filed various decrees and orders of the court and others in support of his claim, but defendants cited only four witnesses, who failed to appear (after the vacation) as directed.

The ex-officio sudder ameen notices that this claim has not before been decided; that Rajkoomar Singh's suit for the collections made on his behalf during his minority was not tried on its merits, but *nonsuited* for informality on the 6th May 1836. But in that order passed by the judge, it was noticed by the court that Jobraj had exceeded his power in granting leases extending *beyond the period* of Rajkoomar's minority, and that the principal sudder ameen's decree, dated 27th June 1838, clearly proved that Rajkoomar Singh had come to his majority in 1234 Fussily, and it was also clear from the "mochulkas" taken from the village putwarry and cultivators (when Chuttrolal took possession of Rajkoomar's share by virtue of

his decree) that plaintiff thereby became dispossessed, and the claim of interest for 1248 Fussily, to date of instituting this suit was therefore just. The sudder ameen farther observes that the heirs of Jobraj Singh are clearly liable for this loan, as it was taken by Jobraj, who is primarily responsible to plaintiff; and defendant, moreover, does not deny the amount, and has failed to produce any evidence in refutation of this claim, passing a decree for the amount claimed, with interest on the principal to date of decree, and from that date to date of payment on the full amount decreed, including interest and costs.

#### JUDGMENT.

In appeal, it is urged that this advance was realized by plaintiff from the annual rental due to the maliks, but this *new plea* (brought forward in *appeal* for the first time) cannot be admitted. It should have been set forth in defendant's "*answer*" to the plaint, and, moreover, it is manifestly defective; for one-third of the rental (Company's rupees 66) would yield only 22 rupees yearly, which, in ten years, (from 1234 to 1243 Fussily) would amount to rupees 220 only, and one-third of the advance (Company's rupees 1300) due to plaintiff amounts to Company's rupees 433-5-6. Again, this mode of *alleged* realization is opposed to the terms of the peshgee deed itself, which required the advance to be repaid *at once* either at the termination of the five years' lease, or at the *end of any subsequent year*. Moreover, defendant, in his answer, *did not urge that it had been paid*, but pleaded that *Chuttrolal was liable for the amount*. Now this court, in its decision, dated 6th May 1836, distinctly ruled that Jobraj Singh had no right to grant leases on behalf of Rajkoomar Singh beyond the period of his minority, and it is shown in another decree, 27th June 1838, that Rajkoomar came of age in 1234 Fussily; and farther, the "*mochulkas*" taken from the village officers and ryots (on placing Chuttrolal in possession in execution of his decree.) proves that plaintiff was ejected from that period, as the village putwarry, gorait, and cultivators, stipulated to pay the rents to Chuttrolal from that time, nor does it appear that any adjustment of accounts in respect to this village (including this loan) ever took place between Jobraj and Rajkoomar Singh. It is true that Rajkoomar brought an action against Jobraj (the guardian) and the Government for that purpose, but it was thrown out for informality, and from the period of ejection in 1243 Fussily to 1253 (or 1846) when this suit was instituted, only ten years have elapsed; so that plaintiff is in time, though it does not appear nor is it necessary to inquire, why plaintiff delayed so long in bringing forward this claim. For the above reasons, I am of opinion that the plaintiff's claim is just, and the principal sudder ameen's judgment is accordingly affirmed. The costs to be liquidated by appellant.

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THE 27TH FEBRUARY 1851.

No. 2 of 1850.

*A Regular Appeal from a decision passed by the Acting Collector of Sarun, dated 4th March 1850.*

Mohunlal, Soonder Narain and Acheylal, (Plaintiffs,) Appellants,  
*versus*

Eteem Shah and Edil, (Defendants,) Respondents.

CLAIM, to resume and assess 2 beegahs and 15 cottahs of land in Russoolpoor, pergunnah Barah, valuation Company's rupees 123-12.

This suit was instituted on the 14th February 1848; plaintiff setting forth that he had purchased 5 annas and 15 gundahs in the above village at auction, on account of arrears of revenue due by Jaleemoollah, on the 29th August 1833; but, in consequence of disputes amongst the co-sharers, had not obtained full possession for three or four years after the sale, when he found defendants in possession of this portion of land, which they forcibly retained without paying rent to which he was entitled, under Clause 4, Section 30, Regulation II. of 1819.

Defendants pleaded a rent-free tenure of 10 beegahs granted to their ancestor in 1135 Fussily, and which Koorkut (the father of Eteem Shah) had filed when the estate was attached under Regulation II. of 1819.

#### JUDGMENT.

The officiating collector, after calling upon the parties for their proofs, and a report from his office regarding any rent-free land which might be recorded as appertaining to this village, and observing also that defendant had filed no sunnud, dismissed this suit, as being barred by the lapse of more than 12 years from the date of plaintiff's purchase in 1833, to the date of suit in 1848. But it has been ruled that the general law of limitation is inapplicable to suits instituted by zemindars for the "resumption of rent-free tenures," (*vide* Sudder Dewanny Adawlut Decisions, volume VII., dated 20th May 1848, in case of Sheik Shafaetoolah *versus* Joykishen Mookerjee and others.) Plaintiff has urged this objection in appeal, and cited the above precedent. The collector's order, declaring this suit to be not cognizable, must, therefore, be annulled.

#### ORDERED,

That this appeal be decreed with refund of stamp duty, and the collector's decision be reversed, and the case be returned for trial *de novo*. The costs to be awarded on the final decision of the suit.

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THE 27TH FEBRUARY 1851.

No. 1 of 1850.

*A Regular Appeal from a decision passed by the Officiating Collector of Sarun, dated 22nd January 1850.*

Moharajah Nowul Kishwur Singh, (Plaintiff,) Appellant,

*versus*

Bhowun Geer and Ramnewaz Doobey, (Defendants,) Respondents.

CLAIM, to resume and assess 60 beegahs of land, situated in mouza Sutha, tuppeli Sunowl, pergunnah Mughowa, valuation Company's rupees 1350.

This suit was instituted by plaintiff on the 22nd September 1848, under the provisions of Section 30, Regulation II. of 1819, and Section 6, Regulation XIX. of 1793, being under 100 beegahs, and alleged to be held under an invalid title.

Ramnewaz, the purchaser of the rent-free land, sets forth that the land in question was "shewutter," consisting of 51 beegahs only, and was situated in the *toleh* Sutha, appertaining to the village of Nowadce, and had been obtained from plaintiff's ancestor, Raja Dhoroop Singh, by Soogur Geer, an ancestor of Bhowun Geer, under a grant dated 5th Kartick 1145 Fussily, and had been recognized by an amil (Tanoo Chowdree) in 1193 Fussily, and by Mr. Robertson, superintendent at Patna, in a perwannah dated 1st April 1786, and was duly registered in the collector's office, and had been exempted from the lands settled with plaintiff's ancestor, and that it had descended from Soogur Geer through two of the Goseins to Bhowun Geer, from whom he had purchased it for Company's rupees 765, on the 1st April 1847; and under these circumstances the land was not liable to resumption and assessment. Bhowun Geer, who had sold his rights and interests to another, did not defend this suit.

The collector observed that the sunnud (which is filed) was dated before the settlement of the village in 1198 Fussily, (viz. 1145, Fussily, or 1738,) and had been registered in his office in 1202 and 1208 Fussily, (or 1795 and 1801,) and the precedent of the zillah judge, bearing date 28th February 1849, cited by plaintiff, referred to a case in which the grant had *not* been registered, and, therefore, was irrelevant; and considering, therefore, the claim to resume unreasonable, dismissed the suit, with costs.

## JUDGMENT.

Plaintiff urges, in appeal, that the registration of the deed was not in conformity to the provisions of Sections 25, 26 and 27, Regulation XIX. of 1793, under which law he is entitled to resume and assess, especially as the rent-free holder offered no objections at the time

of permanent settlement of the village made with his ancestor, and, therefore, prays that the collector's order may be reversed.

I find, however, that this sunnud, dated 5th Kartick 1145 Fussily, (which bears all the appearance of being a genuine document) was registered in the collector's office in 1202 Fussily 1794-95. Now the proclamation for the registration of rent-free tenures, under Sections 24 and 25, Regulation XIX. of 1793, was issued in this district on the 1st November 1794. It is evident, therefore, that the grant was registered within the prescribed period of one year from the date of publication. It has been ever since recognized as a rent-free tenure, and has descended from generation to generation amongst the Goseins in lineal descent, until recently purchased by Ramnewaz, the present occupant. The collector's decision, therefore, upholding this registered rent-free tenure, appears legal and proper. The precedent cited by appellant is not relevant, as in that case the sunnud had not been registered.

ORDERED,

That this appeal be dismissed, with costs, and the decision of the officiating collector of Sarun be affirmed.

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## ZILLAH TIPPERAH.

PRESENT : T. BRUCE, ESQ., JUDGE.

THE 21ST FEBRUARY 1851.

Case No. 15 of 1850.

*Regular Appeal from a decision of Cazee, Mahomed Ali, Principal Sudder Ameen, dated 9th May 1850.*

Musst. Ooseema Banoo and two others, heirs of Syud Mahomed Ameer, (Defendants,) Appellants,

*versus*

Nubbo Chunder Chatterjea, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 1364-2-8.

This suit was instituted on the 26th March 1849, for the execution of a decree, dated 28th June 1845, *i. e.*, upwards of twenty-three years previously.

Plaintiff is the son and heir of one of the original decree-holders, and as such, claims an 8 annas interest in the decree. The defendants are heirs of the original debtors, of whom there are two; but the heirs of only one of them appeals.

The principal sudder ameen gave judgment for plaintiff, on the grounds, first, that as by Constructions Nos. 3 and 495, a decree might be executed without recourse being had to a regular suit, at any time within twelve years from the date of the decree, it followed that it might be enforced, after the expiration of that period, by a regular suit; and, *secondly*, that the defendants had failed to prove their plea that the decree had already been satisfied.

The courts have no specific rules for their guidance as to the limitation of time for enforcing execution of a decree; but the principle involved in the Reports and Constructions of the Sudder Court, on this point, appears to be, that, although there is no absolute bar to the enforcement of a decree, without a fresh suit, even beyond the period of twelve years after the date of the decree, provided good and sufficient cause be shown for the delay, and no valid objections be advanced by the adverse party, yet, that the practice of the courts is opposed to execution being taken out on summary application, after twelve years; and that even a fresh suit, instituted after that period, is subject to the conditions described above.



In the present case, and on the above principle, I am of opinion that plaintiff is entitled to a decree. The original decree is dated Assar 1232 B. S. The decree-holder, plaintiff's father, died in 1240. The defendants do not affirm that plaintiff had attained his majority prior to the year 1243. It is proved that the existence of the decree was only brought to plaintiff's knowledge by his father's vakeel, in 1251; that he applied to the court for execution by summary process in 1253; and, the application having been finally rejected by the Sudder Court in that year, that he instituted the present suit in 1255. Plaintiff has thus shown good and sufficient cause for the delay.

The defendants plead that the decree has been satisfied; but, though allowed ample time by the court below to prove their plea, they adduce no evidence whatever in support of it. In this court, appellants say that they were prevented doing so by the ravages of the cholera in their neighbourhood; but such a plea is quite untenable, the more especially as it was not advanced in the court below, and as other proofs were filed by them at the time referred to.

They plead that plaintiff has omitted to include among the defendants, one of the sons of Kalleekinkur, the joint decree-holder, with his (plaintiff's) father: but plaintiff explained in his reply, the circumstances under which the omission was made, and appellants filed no rejoinder. It appears also, from one of the appellant's own exhibits, copy of a petition from the plaintiff, and others, for the registry of their names as proprietors of their deceased father's property, that the person referred to did not succeed to his father.

The appellants' objection to the principal sudder ameen's award of interest, from the date of the original decree, I consider a valid one. Plaintiff has shown good and sufficient cause for the delay in executing the decree; but that delay being in no way to be attributed to the defendants, they should not be made to suffer for it. I am of opinion that it will be sufficient to allow interest from the 26th May 1846, the date on which plaintiff applied summarily for execution, the costs of both courts being apportioned accordingly among all the defendants and plaintiff.

Respondent pleads in answer to the appeal, that instead of a decree against the estate of the original debtors, he ought to have obtained a decree against the defendants, without reference to the estate left by the original debtors; but this being opposed to the Mahomedan law, and the defendants being of that religion, I see no reason for interfering with the principal sudder ameen's decision on that point.

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## •ZILLAH TIRHOOT.

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PRESENT : THE HONORABLE ROBERT FORBES, JUDGE.

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THE 15TH FEBRUARY 1851.

No. 7 of 1849.

*Regular Appeal from a decision of Moulvee Niamut Allee Khan Bahadur, first Principal Sudder, Ameen, dated 15th January 1849.*

Chunder Thakoor, (Plaintiff,) Appellant,

*versus*

Baboo Munorut Singh, and after him his widows, Mussts. Jankee Koonwur and Meenee Koonwur, (Defendants,) Respondents.

THIS was a suit preferred by the plaintiff to recover from his opponent, Company's rupees 2307-13-6, the principal and interest of a loan on bond, dated the 21st Assin 1254 F. S., with a promise of re-payment by the 30th Aughun 1255 F. S., and the suit having been decreed in favor of the plaintiff, by this court's decision of the 7th December 1849, the circumstances of the case and grounds of judgment will be found at page 312 of the Zillah Decisions for that month and year.

On special appeal preferred by the defendant, the case was remanded for re-trial by the Sudder Court's order of the 9th July 1850, (*vide* page 350 of that Court's decisions for that month and year,) the decision of this court which was worded in general terms being deemed by the superior tribunal "obviously insufficient to meet the intention and requirements of Act XII. of 1843, with reference, especially, to other remarks made by the superior courts as to the defective attestation of the bond," conformably to which order a fresh decision is accordingly passed and recorded.

### JUDGMENT.

In their order of remand, the Sudder Court observed that the principal sudder ameen gave a number of reasons, several of them of obvious strength, for doubting the genuineness and validity of the bond. One of these reasons was that there had, in fact, been no attestation of the bond by the witnesses, they being parties who were themselves unable to write, and not even their marks having been affixed to their signatures professed to have been written on the bond by other persons."

Three witnesses, whose names are on the bond, attest its execution, and prove the payment before them of the money lent. They also depose that the bond was written in their presence by one Meetun Lall, whose name is found upon it as the writer. It is true that those persons were unable to write, and could not therefore so far identify the bond. Their attestation of it is, however, sworn to by one Dookhurun Raee, the party who signed for two of them, and who can and does identify the bond, the writer of the deed, Meetun Lall, and who signed for the remaining witness being dead. The witness Dookhurun Raee, also deposes to the writing of the bond by Meetun Lall, to the payment of the money, to the defendant's signing the bond with his own hand, and to Meetun Lall's signing for the other witness in his (Dookhurun's) presence. The evidence too of the latter witness is corroborated on all points, save the identification of the bond, by the testimony of three other persons who depose to their having been present, and acquainted with the above transaction, and two persons have deposed to their knowledge of the fact of the plaintiff having importuned the defendant for payment. Moreover, the handwriting of the signature of the defendant, in his vakalutnamah in this court, corresponds with that alleged to be his in the bond.

Two other points are thus noticed by the superior court: first, "It was remarked also that the plaintiff had been proved by the witnesses for the defendant, to have been a cook in his service, and not, therefore, in a position to make a large loan at a date not long subsequent to his quitting the service; and, secondly, it was farther stated that these witnesses showed that the plaintiff, after leaving the service of the defendant, had gone into that of a party, Baboo Ram Gholam Singh, hostile to the defendant, at whose investigation the principal sudder ameen believed that the suit had been groundlessly brought." It is true, as regards the first point, that the defendant's witnesses do depose to the plaintiff having been a cook in the service of the former, but neither can that single circumstance suffice to nullify or invalidate the positive testimony, oral and documentary, which goes to establish the loan transaction, nor does it render it impossible for the plaintiff to have had other resources at his command and other means of making money, besides his being in service. The evidence on the second point, viz. the alleged hostile investigation of the suit by Baboo Ram Gholam Singh, besides being vague, indefinite, and untrustworthy, does not at all disprove the loan transaction, and it is worthy of remark that two of the defendants' witnesses, in answer to questions put by the latter, allow the plaintiff to be a person of some substance, and that he is a small mahajun; one of them adding that he had formerly held the situation of tehsildar on the part of the defendant at a saltpetre factory of the latter.

Considering, therefore, the positive evidence adduced by the plaintiff to be, with reference to Section 15, Regulation III. of 1793, sufficient and trustworthy, and that by the defendant to be only negative and insufficient, and that the loan and execution of the bond have been satisfactorily established, I reverse the judgment of the principal sudder ameen, and decree the appeal, with costs, chargeable to the respondent.

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THE 18TH FEBRUARY 1851.

No. 13 of 1850.

*Regular Appeal from a decision of Moulavee Niamut Allee Khan Bahadoor, first Principal Sudder Ameen, dated 10th June 1850.*

Chowdhree Cheit Singh and fifteen others, (Plaintiffs,) Appellants,  
versus

Chowdhree Nunda Singh and six others, (Defendants,) Respondents.

SUIT to be maintained in possession and proprietary right of 135 beegahs, 1 cottah of land in mouza Kewut, pergunnah Bulliah, by destroying a boundary pillar, and by reversing proceedings of the deputy collector and superintendent of survey, dated, respectively, the 29th June and 19th December 1846; action being laid at Company's rupees 1350-8-0.

The parties to this suit are maliks whose properties adjoin, and the statement of the plaintiffs is that mouza Kewut, their estate lying to the west, mouza Hajeeopore Kusmawut, the village of the defendants, is on the east, the boundary dividing the two properties being the Dob Muhurwa and a tank called Ukurnee; that at the time of survey, the defendants by colluding with the ameen got the land in dispute which, belonging to the plaintiffs' village, lies to the west of the above boundaries, east of the Rola nullah, and north of a dob called Ekdurrah, surveyed with their (defendants') own mouza, which survey, notwithstanding their (plaintiffs') objecting, was confirmed both by the deputy collector and superintendent of survey; that previously in 1818, in another boundary case between mouzas Kewut and Ruheempore Turraiyah, the whole area and boundaries of the former were measured by an ameen and their (plaintiffs') right upheld by the judge's order of the 16th September 1818, according to which measurement the land under litigation was included in 980 beegahs, lot No. 11, in the khusrh papers, which papers, however, owing to the case being speedily disposed of, could not be filed before the survey authorities; that the ryots, putwaree, thikadars, and neighbours are well acquainted with the fact of their (plaintiffs') being in possession; that the proceeding cited by the survey officer in the case of Assa Rae Karindah, plaintiff, *versus* the Maliks of Hajeeopore Kusmawut, under Regulation XLIX. of 1793, as proof of the defendants being in possession, is not enough, because

that proceeding contained no investigation of the right of any one. Besides which, they (plaintiffs) were not plaintiffs in that case; that agreeably to the foudarry proceeding of the 30th June 1841, mochulka was taken from the defendants regarding this very land, and that in the case of Jugroop Singh and others *versus* Shunker Raee and others, which involved a dispute regarding the southern boundary of mouza Kewut with mouzas Bahadurpore and Shapore, the opinion of the survey officer, that a certain Sisswahjan or collection of water was the boundary, is not to the purpose, and his objection that when the defendants deceitfully caused a survey of land as their own as far as the Kola nullah, while their (plaintiffs') witnesses stated that the boundary was the Sursuoeejan, which adjoins the Muhurwa Dob, the land of which belongs to their (plaintiffs') mouza Kewut, signified nothing, and that officer's dwelling on the evidence given by a single witness tampered with by the defendants was not just. The witnesses of the defendants were persons of low caste, and their testimony conflicting; and in regard to the objection taken by the superintendent of survey that the quantity of land was different from that stated before the deputy collector, they (plaintiffs) did not measure the land before they objected, and as the case is a boundary dispute, whatever land is included within their boundaries is theirs. The circumstance too of the signature of one of the plaintiffs, Cheit Singh, being found on the survey map, cannot stand for all of them.

The defendants, in denial of the plaintiffs' claim, plead, though in different answers, that, with reference to the proceeding under Regulation XV. of 1824, of the 17th March 1829, from which date more than 12 years have elapsed, this suit is beyond time; that before the deputy collector, the plaintiffs claimed 210 beegahs; before the superintendent in appeal, 125 beegahs, and on their (defendants') demurring, they (plaintiffs) again laid claim to the former quantity, and now they sue for 135 beegahs, 1 cottah, a quantity differing from that stated on either of the two former occasions, and with different boundary marks from what they first stated, and that their (defendants) long possession is proved by the proceedings of the survey department. Between the villages of both parties the Kolah nullah, a deep river running from south to north, empties itself into the Deh Ukurnee, which is the ancient boundary, to the west of which is the plaintiffs' and to the east their (defendants') property, and that the objections of the plaintiffs to the proceedings of the deputy collector, who personally visited the land in dispute, are futile. The signature too of Cheit Singh is on the map, and the Deb Ukurnee being on the north west corner, the Dob Muhurwa is a long way off on the south-east corner, and accordingly the land in dispute cannot possibly be any how west of the Ukurnee. Again, the Dob Ekdurrah has no where been mentioned as a demarcation by the survey autho-

rities, but the plaintiffs have superfluously introduced it, and their (defendants') boundary extending to the Kolah nullah is clear from the decision and map of the principal sudder ameen in the case of Jugroop Raee *versus* Tribhoobun Raee and others, and the map in the dispute with mouza Ruheempore Turrayah can prove nothing in this case, because the dispute was then in regard to the boundary at the north-west corner of mouza Kewut, the plaintiffs' property, and if the plaintiffs have any how got any thing inserted in it, that cannot injure them, (defendants); and indeed the proceeding under Regulation XV., and the evidence of the plaintiffs' own witnesses before the survey officers, will suffice to disprove it. When the case was before the survey authorities, the plaintiffs did not make mention of the map in the dispute with mouza Ruheempore Turraiyah, although the deputy collector gave them time to file proofs, and the case was four months pending in appeal. In regard also to the plaintiffs' allegation of the ryots and thikadars being aware of their (plaintiffs') possession, the giving of pottahs and receipts and farkhuttees, and the statements of thikadars, are matters within the plaintiffs' own power; and the mochulka referred to by the plaintiffs was taken from both parties to keep the peace, and not with any particular reference to the land in dispute.

Ten persons, maliks of mouza Shapore, in one petition, and two others, maliks of Futtehpore Musdee, in another petition, coming forward as third parties, each laid claim to different portions of the land under litigation in this suit.

The principal sudder ameen dismissed the suit. He observed that the plaintiffs had stated the quantity of land to be different both before the deputy collector, the superintendent of survey, and in this suit; that the defendants in this case were not parties to the suit of Cheit Singh *versus* Joobah Raee, decided by the judge on the 16th September 1818, and that in the map and report of Reyaz Hosein, the ameen deputed in that case, there is no mention of the particular land now in dispute. By the inquiry of the ameen sent by his (the principal sudder ameen's) court, the quantity of the disputed land turned out to be 264 beegahs, 8 cottahs, 6 dhooors, and the boundary marks which the plaintiffs gave in writing to the ameen of his (the principal sudder ameen's) court, viz., the Sursuoeejan, south of the Ukurnee, and the Dhobghattee, or Dhobee's ghat, east of the latter, are not found in Reyaz Hosein's map; and although the ameen of his (the principal sudder ameen's) court has inserted the Ukurnee in his map just as it is on the spot and in the presence of both parties, it too is not found in the map of Reyaz Hosein. Both the plaintiff Cheit Singh, and the mooktear on the part of the other plaintiffs, who were present, were unable to identify the land in dispute according to the boundaries given in Reyaz Hossein's map. It, moreover, appears from the ameen's report, that prior to the survey dispute, the land under

litigation was in the defendants' possession, and the plaintiffs having instigated one Assa Rae and others, Durkutkinadars, in 1824 to institute a suit under Regulation XLIX. of 1793, themselves came forward as objectors, the case being struck off on the 17th March 1829. Seven witnesses had deposed in his (the principal sudder ameen's) court that, before the survey, they had cultivated the land in dispute for which they paid rent to the defendants, those persons also testifying that the boundaries were as stated by the defendants. It likewise appeared from a decision of Moulvee Ashruf Hosein Khan, second principal sudder ameen, dated the 7th March 1843, in the case of Jugroop Singh and others *versus* Shunker Rae and others, that the lands south of the Kolah nullah had been settled to belong to Shapore, those north of that nullah being the defendant's mouza, and although one of the plaintiffs in this case, Surubjeet Singh, in that suit laid claim to the proprietary right of the defendants' land, and all the present plaintiffs, in their reasons of appeal in the survey case, acknowledged the correctness both of the map and decision in that case, still the land now in dispute is not found within the boundaries then given. The principal sudder ameen concluded by observing that, from an inspection of the survey map and numerous other papers filed by the defendants as proofs, and detailed in the 7th para. of his decision, the statement of the defendants appeared to be correct. The plaintiff Cheit Singh had signed the survey map, and as the surveying officer had been to the spot and fixed the thak, and the report of the ameen deputed by his court had been approved, his (the principal sudder ameen's) going in person to the place was unnecessary.

The chief pleas urged in appeal are that by inspecting the map and khureh and decision in the case regarding the boundary of Ruheempore Turraiya, the boundaries will be found to correspond exactly, and as the defendants never objected to that map and decision, an order which has become final cannot agreeably to Section 16, Regulation III. of 1793, be altered or reversed. The ameen too deputed by the principal sudder ameen having colluded with the defendants, the plaintiff Cheit Singh presented a petition to the principal sudder ameen with two requests, first, that he (the principal sudder ameen) would visit the place in person, and, secondly, that the defendants should be interrogated on oath in whose possession the land in dispute really was; but the defendants declined to make oath, and the principal sudder ameen did not go to the spot. They (plaintiffs) neither signed the thak and report of the ameen, nor were they present, and the ameen, with a view to injure them, measured a larger quantity of land than that under dispute, and which accordingly came to be inserted in the decision, and in the judgment of the 7th March 1843, it was ruled that that decision was not to affect parties other than the plaintiffs and the defendants, and it was not just in a case like

this to let the matter hinge upon the inspection of the land by the survey authorities.

### JUDGMENT.

In this case one of the defendants, Tara Singh, having died while the suit was pending before the principal sudder ameen, two others of the defendants, Bolakee and Bhoondah Singh, were proved in that court to be his heirs; notwithstanding this, the plaintiffs, as appellants, included in their appeal the name of the defendant deceased, as well as the above persons, his heirs, without the necessary specification of asalutun and verasutun.

By para. 2 of the Circular Order of the 1st July 1842, extended to the zillah courts by that of the 13th April 1847, defects of this kind are curable within the period of appeal, which, however, has not been done in the present case. Conformably, therefore, to the circular cited, the court has no alternative but to reject the appeal. I accordingly reject this appeal, with costs.

THE 19TH FEBRUARY 1851.

No. 22 of 1850.

*Regular Appeal from a decision of Moulvee Itrut Hossein, Sudder Ameen of Mozufferpore, dated 28th June 1850.*

Munoorut Lall and Sakhawut Allee, (Defendants,) Appellants,

*versus*

Musst. Fusseh-oonissa, mother, and Musst. Zuheer-oo-nissa, wife of Nubbee Buksh, deceased, for themselves and as guardians of Abdool Hye and Abdool Herat, (Plaintiffs,) Respondents.

SUIT to recover Company's rupees 640-14, principal and interest of arrears of rent of a kutkinna lease of something more than the 6 annas, 6 gundahs, 3 cowrees share of mouza Korowlee, principal and dependencies, pergunnah Bhurwarah, from 1253 to 1255 F. S.

The plaintiff's ancestor, Nubbee Buksh, who held a thika farm of the above property from Syud Ruzeeooddeen Hosein and others, the maliks and minhyedars, from 1246 to 1255 F. S., under-let the property for the same period by kutkinna lease, dated the 12th October 1838, the jumma being fixed at Sicca rupees 250 in cash, besides of payment of 20 maunds of paddy, the thikadar having voluntarily relinquished 10 beegahs as the khoodkasht cultivation of Syud Ruzeeooddeen, and the plaintiffs having realized the rent up to 1252 F. S., by a decree of court, they now sue for the balance after deducting payments since made.

Admitting the kutkinna engagement, the defendant, Munoorut Lall, pleads that besides the 10 beegahs of land relinquished to Syud Ruzeeooddeen, there was 1 more beegah, 5 dhooors, or atoge-



ther 11 beegahs, 5 dhoors of khoodkasht land, the rent of which is 28 rupees 6 annas, and 9 annas for 2 tar trees, as per tunkah or assignment granted by Syud Ruzeeooddeen. There are also to be credited 55 rupees, 11 annas, which they (defendants,) paid in 1253 F. S., leaving a balance due by them for that year of 175 rupees 6 annas.

In 1254 F. S., they (defendants) paid rupees 173-14-3, in cash and grain as per plaintiff's three receipts, for which year the above sum of 28 rupees 15 annas has also to be credited, leaving a balance of rupees 60-8-3.

In 1255 F. S., they (defendants) paid in cash and grain 50 rupees, and 1-4 for a goat and buttermilk, and the 28 rupees 15 annas as before being deducted, the balance remains of rupees 179-13-0.

There are farther to be credited rupees 264-4-6, agreeably to plaintiffs' assignment of the 3rd Matgh 1254 F. S., which is on account of rent of khoodkasht land and malikanah, besides a separate sum of rupees 29-6 for malikanah, deducting which two items, there remains a balance of rupees 122-0-9, which they hope to be remitted agreeably to the verbal promise of Nubbee Buksh, otherwise, he (the defendant) is ready to pay his share or half.

The answer of Sakhawut Allee is in support of that of his co-defendant.

The sudder ameen disallowed the sum of 264 rupees for which the defendants claimed credit; because according to the conditions of the deed of assignment, they ought but have failed to produce acknowledgments thereof. Finding the jumma, including grain for 1253 to be Sicca rupees 260, and for each of the years 1254 and 1255 to be Sicca rupees 263, or total Sicca rupees 786, or Company's rupees 838, deducting from which Company's rupees 251-5-2 as per receipts and tunkanamah, and rent for 10 beegahs of khoodkasht proved to have been paid, a balance remained of Company's rupees 587-8-3 principal, and Company's rupees 192-10 interest, to the date of decision, or total Company's rupees 779-15-10, for which amount the sudder ameen gave the plaintiffs a decree.

Appealing from this decision, the defendants urge that as the plaintiff, Abdool Hye, did not deny the receipts and deed of assignment, there was no occasion to call for the acknowledgments regarding the latter. Nevertheless, their (appellants') vakeel did ask for two days leave in order to file them, which, however, was refused, and an ameen ought to have been deputed to make inquiry regarding the 11 beegahs of land.

#### JUDGMENT.

Three defects in the investigation of this suit in the lower court oblige me to send it back.

*First.*—The proceeding under Section 10, Regulation XXVI. of 1814, has not been drawn up conformably to law, and the issue or issues properly or, indeed, at all determined.

*Second.*—A difference being apparent between the statements of the parties suing and sued regarding the quantity of khoodkasht land, one saying 10 and the other 11 beegahs, the sudder ameen has taken for granted the allegation of one without proof of the correctness of either.

*Third.*—In regard to two different sums miscalculations have been made which affect the judgment.

I reverse the order of the sudder ameen, and remand the suit for re-trial, with the usual order for re-payment of stamp duty.

THE 19TH FEBRUARY 1851.

No. 24 of 1850.

*Regular Appeal from a decision of Moulvee Itrut Hossein, Sudder Ameen of Mozufferpore, dated 4th July 1850.*

Doond Bahadoor Singh and six others, (Defendants,) out of  
nine Appellants,

*versus*

Ramdyal Missr (Plaintiff,) Respondent.

THIS was an action to recover the sum of Company's rupees 579-2-0, principal and interest of a loan on bond, dated the 21st Kartick 1252 F. S., alleged to have been made to the defendant Doond Bahadoor Singh and seven others by their co-defendant Ihsan Alee, the borrowers promising repayment in five instalments. No instalment having been paid, and the period stipulated for the last being about to expire, the lender Ihsan Alee, on the 15th Kartick 1256 F. S., sold the bond by a separate deed of sale to the plaintiff Ramdyal Missr, who, suing for the recovery of the amount it covers with interest, pleads also that the defendants were present when he made the purchase, and that they (defendants) accordingly promised payment to him (the plaintiff.)

Doond Bahadoor Singh and 4 others of the borrowers (the other 3 having died before the plaintiff bought the bond,) plead, in answer, that the plaintiff has sued three dead men, and that his suit being indefinite and without specification of instalments, is inadmissible; that the plaint does not state which of the borrower's signed the bond; that Ihsan Alee is a man of straw; that before the date of the bond, Doond Bahadoor Singh went on pilgrimage to Benares and Allahabad, and that the three of the parties sued having died before the plaintiff bought the bond, how was it possible for them to have been present at that transaction?

Musst. Neermohsee, the wife and heir of Sheo Buksh, one of the three deceased, files an answer of similar purport to that of the preceding defendants and Jungee Singh, the heir of the two others. Goureesunker and Ram Udheen Singh did not defend the action.

The answer of the lender, Ihsan Alee, was in support of the plaintiff's claim, and he prayed his own release from liability.

Releasing the lender, Ihsan Alee, the sudder ameen decreed the suit in favor of the plaintiff against all who were sued as borrowers. He was of opinion that the bond was proved by the evidence of the persons who signed it, its wording and their testimony establishing that the bond was executed to provide for the payment of a sum due on account of peshgee by the defendants Doond Bahadoor Singh and others, to Musst. Rumzoo, the mother-in-law of Ihsan Alee, in whose name they accordingly executed the bond in question, the latter person admitting his sale of the bond to the plaintiff.

Two points are worthy of notice in the appellants' reasons of appeal; 1st, that had the sale of the bond really taken place, it would have been in the name of Musst. Rumzoo, or in the event of her death, in that of her heir; 2nd, that the witnesses named in the deed of sale were not summoned to prove the plaintiff's allegation to their (appellants') having promised payment to the former.

#### JUDGMENT.

The sudder ameen's investigation of this case is insufficient and incorrect. The plaintiff ostensibly sues on a bond for recovery of a loan, and accordingly, in his plaint, he calls the transaction a *curz soodee*, stating, as in the case of a *bona fide* loan, that money had actually changed hands. It appears, however, that no loan was really made, but that the bond was merely executed to provide for the part of the defendants. The sudder ameen has no where adverted to the real character of the transaction, but passed a decree as if in an ordinary loan suit.

He ought also to have summoned the witnesses to the sale of the bond. Besides which his proceeding under Section 10, Regulation XXVI. of 1814, is not drawn out according to law, and determines no issues.

Accordingly, reversing his decision, I remand the suit to the sudder ameen to be re-tried, with reference to the above remarks, and with the issue of the customary order for refunding the institution fee.

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THE 21ST FEBRUARY 1851.

No. 364 of 1850.

*Regular Appeal from a decision of Mooftee Eradut Alee, Moonsiff of Mozufferpore, dated 10th July 1850.*

Mr. George Falkner, (Plaintiff,) Appellant,

*versus*

Ram Sunnehee Sahoo, Sheochurn Singh, and Lall Beharee Singh, (Defendants,) Respondents.

THIS was a suit instituted by the plaintiff for the recovery of Company's rupees 147-2-6, principal and interest, on account of price of linseed and mustard, and the statement of the plaintiff is that the two defendants, Sheochurn and Lall Beharee Singh, sent a letter by way of security, dated the 19th Kartick 1256 F. S., addressed to Ram Udheen Singh, his (plaintiff's) amlah, requesting the latter to get him (plaintiff) to advance to one Byjnath Sahoo the sum of Company's rupees 71, for which they (the above two defendants) agreed to provide linseed and mustard, and accordingly the other defendant, Ram Sunnehee Sahoo, through his son, the said Byjnath Sahoo, did receive the above amount in two different sums, first, on the 2nd November 1848, 42 rupees, and, secondly, on the 2nd December following, rupees 39, for which he wrote a document on stamp paper binding himself to weigh out in Bysack 1256 F. S., linseed and mustard of the best quality equivalent to the money advanced with interest, failing which he (the defendant) was to repay the advance at the Calcutta market price. The defendant has not fulfilled his contract, and accordingly the plaintiff sues to recover from him at the Calcutta market rate.

The defence of Ram Sunnehee Sahoo was in support of the plaintiff's claim, and he pleaded that he had paid the money to Lall Beharee Singh as his security, the answer of the latter being that, as stated by the plaintiff, he (defendant) had stipulated in the letter that the money should be paid to Byjnath Sahoo, why then did the plaintiff take a document from and give the money to Ram Sunnehee Sahoo another person?

The defendant Sheochurn Singh filed no answer.

The moonsiff, absolving Sheochurn and Lall Beharee Singh, gave the plaintiff a decree against the single defendant Ram Sunnehee Sahoo for the principal of the claim only, viz., Company's rupees 71, with interest from the date of the deed to that of decision, adding that as the case was ready before the promulgation of Act XV. of 1850, he did not record a proceeding under Section 10, Regulation XXVI. of 1814. He also observed that, with reference to the wording of the letter, and the denial of Lall Beharee Singh, such letter cannot be considered as implying security for Ram Sunnehee Sahoo indeed; the terms of it are not those of a security bond

at all, but only by way of assurance. The defendant Ram Sunnehee Sahoo, has, however, admitted his having written the other document, having failed also to give any proof of the plea urged in his defence. The moonsiff also remarked that the plaintiff had given no proof of the country rates, and the testimony of the witnesses who gave evidence on the point was not sufficiently trustworthy for the court to fix the Calcutta rates upon it.

It is urged in appeal, that as Byjnath Sahoo is the son of Ram Sunnehee Sahoo, the conditions of the security are not void in regard to the latter, and that by the moonsiff's own decision the letter has been in a measure admitted as an assurance, and what else is security? under which circumstances it was not just to release two of the defendants from responsibility; that the Calcutta rates had been proved by evidence, for discrediting which, the moonsiff had not given any reason, and that Ram Sunnehee Sahoo had admitted the writing of the document and the conditions which it contained.

#### JUDGMENT.

I am under the necessity of sending back this case to the lower court, because the moonsiff has not complied with the law for recording a proceeding for the determination of issues, the reason alleged by him for not having done so being insufficient, as the law is imperative and admits of no exception as regards cases undecided before its promulgation.

I reverse the moonsiff's order, and remand the suit to him for re-trial, with the customary order for returning the institution fee.

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THE 21ST FEBRUARY 1851.

No. 28 of 1850.

*Regular Appeal from a decision of Moulvee Itrut Hossein, Sudder Ameen, dated 20th July 1850.*

Jugmohun Singh, Appellant, (out of two Defendants,)

*versus*

Apooch Lall, Plaintiff and Ramchurn<sup>\*</sup> Rae, 2nd Defendant,  
(Respondents.)

THIS was a suit instituted by the plaintiff to receive from the defendants the sum of Company's rupees 238-6-9, principal and interest of a loan on bond, dated the 3rd Assin Sanee 1249 F. S., the original borrower being the defendant Jugmohun Singh, and the lender his co-defendant Ramchurn Rae, the plaintiff suing in right of buhrnamamah, or deed of mortgage, dated the 2nd August 1846, by which Ramchurn Rae made over his right and interest in the bond to the plaintiff Apooch Lall, in satisfaction of a debt, which the former owed to the latter, and the case having already come up in appeal before the late additional judge, the circumstances of

it and his decision, which reversed that of the lower court decreeing the plaintiff's claim as insufficiently investigated, and remanded the suit for re-trial, will be found at page 339 of the Zillah Court's decisions for December 1849.

### JUDGMENT.

The particular purpose for which, when first before the appellate court, this suit was remanded, was to admit of the taking of the evidence of the defendant who denying both the loan and execution of the bond, had pleaded having been affected with blindness, and, therefore, unable to sign the bond, before the alleged date of the transaction.

All the witnesses named by the defendant, three in number, were summoned by the sudder ameen, two of whom, however, being both reported in the *nazir's* return, and admitted by the defendants to have died. The testimony of the single remaining witness, though he did depose to the defendants having been blind, was in the sudder ameen's judgment insufficient.

It is now contended by the defendant, in appeal, that besides his single witness, two of the respondents' witnesses whom he names, had deposed to his being blind; but that allegation is at variance with fact, for a reference to their depositions shows, as already recorded by the late additional judge, that those two witnesses had, on the contrary, stated that the defendant could see a little, and enough to enable him to sign the bond.

I agree in opinion with the sudder ameen; and in the face of the positive and sufficient testimony which the plaintiff has adduced to prove his claim, and which is unshaken by any thing brought forward in appeal, I see no cause for disturbing his judgment.

Affirming, therefore, the lower court's decision, I dismiss the appeal, with costs.

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THE 22ND FEBRUARY 1851.

No. 367 of 1850.\*

*Regular Appeal from a decision of Moulvee Munneerooddeen Hossein, Moonsiff of Muhwa, dated 17th July 1850.*

Gujraj Singh, Appellant, (Plaintiff),

*versus*

Purbhoo Tewaree, Bhurosee Tewaree, and Gunesh Dutt Tewaree,  
Respondents, (Defendants.)

THIS and the case immediately following No. 368 of 1850, being appeals from decisions on precisely the same point, viz., arrears of rent sued for by the same lessee for land in both suits in the same farm, though the defendants are different, are brought on for hearing and judgment together, one decision equally governing both.

The plaintiff as thikadar of the whole of mouzas chuk Jumal and Sehdee, pergunnah Bissareh, from 1247 to 1256 F. S., preferred this suit to recover from the defendants, as cultivators, the sum of Company's rupees 61-15-6, principal and interest of alleged arrears of rent of 3 beegahs, 6 cottahs of land in puttee Kullun in the former mouza, and for the years above specified agreeably to the wasil-bakee account of the putwaree.

The answer of the defendant, Gunesh Dutt, is a denial of his having any land to cultivate in puttee Kullun, and pleading that puttee Khoord is his own mokurruree property. He admits that there is a garden which was planted by his co-defendant Purbhoo Tewaree, of which 8 beegahs 18 cottahs are within his (defendant's) own puttee, the other 3 beegahs being within the plaintiff's puttee.

The defendant, Bhurasee Tewaree, denies having any thing to do with the case at all, and the remaining defendant Purbhoo Tewaree, likewise denying the justice of the plaintiff's claim, pleads that out of the three beegahs mentioned in the plaint, 1 beegah, 1 cottah are his, and 1 beegah 19 cottahs the birmooter land of the late Sheoram Chowbey, agreeably to the sunnuds of former maliks, he (defendant) being in possession of the whole quantity and paying rent to Sheoram Chowbey's heir. He also pleads that in the kishtwaree map and khusreh of the thakbust, the said 3 beegahs were inserted as birmooter.

Bechoo Chowbey, the son of Sheoram Chowbey, as a 3rd party, supported the last defendant's statement.

The suit was dismissed by the moonsiff. He observed, in the first place, that the putwaree deposed to having been appointed only in the end of 1256 F. S., and, therefore, his mere evidence regarding arrears of former years, was not enough; and, secondly, that the testimony of the plaintiff's other witnesses was contradictory, and the plaintiff has not adduced other proof to the satisfaction of the court. The statement of the defendant Purbhoo Tewaree, and the 3rd party, is corroborated by the evidence of three witnesses, and by inspection of the copy of the thakbust khushreh and sunnuds which those persons have filed. Had the plaintiff's claim been really just, he would assuredly have brought it forward before either summarily or regularly. The moonsiff added that plaintiff's proofs having been filed before the promulgation of Act. XV. of 1850, the proceeding enjoined by that law had not been recorded.

As appellant, the plaintiff represents that if the moonsiff distrusted the putwaree's evidence, he ought to have ordered local inquiry by an ameen, and that the birmooter sunnuds which his opponents have filed are on plain paper, and have been fabricated in collusion with the former maliks; and it is not at all surprising if the defendants by leaguings with the thakbust ameen, did get the land put down as birmooter.

## JUDGMENT.

The moonsiff's reason for not recording the proceeding under Section 10, Regulation XXVI. of 1814 is not sufficient, seeing that he received the new law two months before he decided the suit, that proceeding not being for the purpose of calling for proofs, (particularly as the moonsiff states the proofs of one party only, the plaintiff, had been filed,) but for determining the issues on which proofs should be required.

The claim was for rent of 3 beegahs, 6 cottahs, and not only was no local inquiry made to identify the land with that to which the parties themselves refer, but a discrepancy regarding 6 cottahs, remains unreconciled. Local inquiry was clearly necessary before deciding.

Reversing, therefore, the moonsiff's judgment in both suits, I remand them to him for re-trial, and with the usual order of refund of the value of stamp paper.

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THE 22ND FEBRUARY 1851.

No. 368 of 1850.

*Regular Appeal from a decision of Moulvee Munneerooddeen Hossein,  
Moonsiff of Muhwa, dated 17th July 1850.*

Gujraj Singh, (Plaintiff,) Appellant,

*versus*

Kunya Lall, (Defendant,) Respondent.

SUIT to recover Company's rupees 54-8, principal and interest of alleged arrears of rent of 4 beegahs of land in mouza Suhdee Buzoorg, pergunnah Bissareh, for the the years 1247 and 1248 F. S., as per putwaree's wasil-bakee account.

## JUDGMENT.

The decision recorded in the appeal pending No. 367, equally applies to this case. The order of the moonsiff is reversed, and the suit remanded for re-trial, with the usual order of refund of the value of stamp paper.

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THE 24TH FEBRUARY 1851.

No. 25 of 1850.

*Regular Appeal from a decision of John Weston, Esq., 2nd Principal Sudder Ameen of Tirhoot, dated 27th November 1850.*

Musst. Sutbhama, mother and guardian of Soobah Sutlall Jha, minor son of Soobah Heera Lall Jha, deceased, (Plaintiff,) Appellant,

*versus*

Baboo Sheopursun Singh, (Defendant,) Respondent.

THIS appeal was preferred in dissatisfaction with the above order of the above court, by which the appellant was saddled with her opponent's costs in a case in which she had been nonsuited, such order of nonsuit being upheld in appeal.

The late second principal sudder ameen, though nonsuiting the plaintiff, had made each party liable for their own costs without, however, assigning any definite reason for not following the usual procedure of the courts in such cases, and on appeal preferred by the defendant (respondent) from so much of the decretal order, the case was returned to the second principal sudder ameen for re-trial, (*vide* Zillah Decisions for August 1850, page 183,) in order that he might, if any special ground existed, duly record it, passing also such order regarding costs of appeal as might seem proper.

The present second principal sudder ameen finding no ground for departing from the ordinary practice in such cases, ordered the nonsuited plaintiff (appellant) to defray her adversary's costs in both courts, and all that the appellant now urges in appeal has reference to the original case in which she was nonsuited, and not to that actually in appeal.

#### JUDGMENT.

The pleas of appellant are not only frivolous but irrelevant. Affirming the order of the principal sudder ameen, I dismiss the appeal, with costs.

THE 24TH FEBRUARY 1851.

No. 27 of 1850.

*Regular Appeal from a decision of Mr. Colin Macdonald, Sudder Ameen of Monghyr, dated 22nd July 1850.*

Musst. Mande Koonwuree and Musst. Jugdeo Koonwuree, (Plaintiffs,) Appellants,

*versus*

Musst. Moona Koonwuree, (Defendant,) Respondent.

THIS was an appeal from an order of the lower court nonsuiting the plaintiffs in an action they had preferred to recover the sum of Company's rupees 562-15-6, principal and interest of a loan on

bond, dated the 6th Bysakh 1250 F. S., alleged to have been made by the plaintiff's ancestor Shunker Rae, to the ancestor of the defendant, Jankee Rae. The ground of nonsuit was that as the plaintiffs' husbands, Duljeet and Runjeet Rae, are alive, the latter ought to have been the plaintiffs, and brought the action. The plea of the plaintiffs for themselves suing during the lifetime of their husbands is that the latter are missing, (mukfood-ul-khubr,) and they (plaintiffs) have cited witnesses to depose to that effect. The defendant pleaded, on the other hand, that the plaintiffs' husbands are not in reality missing, but only concealing themselves in order to evade process of the foudjarry court which has been issued against them. They (defendants) also have subpoenaed witnesses to prove their allegation, and the evidence of the latter, who reside in the same village, goes to show that the plaintiffs' husbands are still at their own home attending to their own business, and that they (witnesses)\* have seen them going about.

The sudder ameen held two proceedings under Section 10, Regulation XXVI. of 1814. In the first, he raised the issue that supposing, according to the plaintiffs' statement, the husbands of the plaintiffs are really missing, how long would it, agreeably to the Hindoo law, be proper to wait in the probable expectation of their turning up alive, and after the expiry of how long a term should their heirs be recognized as such, and called for a vyavushta from the pundit, which was accordingly given. The tenor of the pundit's answer is that the heirs of a missing person are competent to look after his interests and to collect his debts within twelve years, and to become absolute masters after the lapse of that period.

In his second proceeding, under Section 10, the sudder ameen, after perusal of the pundit's vyavushta, laid down the material issue to be whether Duljeet and Runjeet Rae were, as alleged by the plaintiffs, really missing, or whether according to the statement of the defendants remaining in their own houses they had in order to serve some purpose, caused a report to be spread of their not being forthcoming.

On this issue, the sudder ameen placing more reliance on the evidence of the defendant's witnesses than those of the plaintiffs', and recording his opinion that the plaintiffs' husbands were really not missing, but purposely concealing themselves, nonsuited the plaintiffs. He referred too in support of his opinion to a decision in the case of Ram Dhon Mokerjea *versus* this same Shunker Rae (the present plaintiff's ancestor,) and one Dewan Rae, in which it appeared that the plaintiff on the death of Shunker Rae had named Duljeet and Runjeet Rae, the parties said to be missing, as his heirs.

It is contended in appeal, that the sudder ameen did not give due consideration to the evidence of their (appellants') witnesses

proving that their husbands were missing, and that his nonsuited them was in opposition to the vyavushta.

#### JUDGMENT.

It is clear that the first point for determination in this case, and before the vyavushta can apply, is the issue secondly raised by the sudder ameen, as to whether the plaintiffs' husbands are *bond fide* missing or not. The witnesses summoned by each party have deposed before the sudder ameen in support of the allegation of the party who respectively cited them. The point at issue, however, is not, in my judgment, at all satisfactorily cleared up one way or the other. Indeed, the case cited by the sudder ameen of Ram Dhon Mokerjea *versus* Shunker and Dewan Raee, seems rather to tend to the establishing of the plaintiffs' plea of their husbands being really missing, because, in that suit, (decided by the same sudder ameen) although the matter was not set at rest by definite inquiry, it appears that the plaintiffs were admitted by a petition which they presented to defend the action on behalf of their husbands alleged to be missing, to which no demur appears to have been made by the opposite party. In the heading too of the decision of that suit, the husbands are pronounced mukfood-ul-khubr or missing, which decision was apparently not appealed. I am of opinion that more particular local inquiry from respectable persons unconnected with either party, is necessary, and would probably elucidate the doubtful point.

Reversing, therefore, the judgment of the sudder ameen, I remand the case to him for restoration on his file and re-trial, with advertence to what I have above remarked, and the customary order will issue for refunding the value of stamp paper.

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PRESENT : S. W. ST. QUINTIN, Esq., ADDITIONAL JUDGE.

THE 4TH FEBRUARY 1851.

No. 9 of 1849.

*Appeal against a decree passed by Moulvee Mahomed Mahamid Khan, late second Principal Sudder Ameen of Tirhoot, on 23rd December 1848.*

Dildar Allee Khan, (Plaintiff,) Appellant,

*versus*

Bahadoor Allee Khan, Buharam Allee Khan, first party, and Bebee Wilayet, herself, and Bebee Furheemoon-nissa, widow of Tahir Hosein Khan, the heir of Bebee Mohummuddee, second party, (Defendants,) Respondents. •

THIS suit was instituted on the 4th October 1847, to recover the sum of rupees 3733, 1 anna, 3 pies, 8½ krants, being the amount, principal and interest, of Government revenue paid in excess of a seven anna share in the villages of Gullam and Osma, from 1243 up to 1252 Fusly.

The plaint is that eight annas in these villages is the property of the plaintiff, and eight annas belong to the defendants; that one anna in the plaintiff's share is in dispute between him and the widow of Tahir Hosein Khan; that the plaintiff's father sued the defendants for excess of revenue paid in for 1243 and 1244 Fusly; that the suit was struck off; that the plaintiff has paid the whole of the Government revenue for these villages to prevent the sale of his ancestral property.

Bahadoor Allee Khan and Buharam Allee Khan, defendants, in reply, plead that these villages are rent-free resumed estates; that the plaintiff took a farm of their share in these villages with others, on an annual rent of rupees 7570; that he sub-let these two villages to another party for rupees 1656; that a jumma of Sicca rupees 905, was fixed on the villages at the time of settlement; that there was no *proviso* in the lease covenant that the defendants should pay up the Government revenue; that the plaintiff has derived from the sub-lease usufruct in excess of the jumma assessed on the villages by the Government, and has not lost, therefore, by the villages having been resumed and settled.

The defendants, Bebees Wilayet and Furheemoon-nissa, plead, in reply, that the plaintiff had no right or interest in the effects of Tahir Hosein Khan, and that the plaintiff has only a four anna share in this estate.

The principal sudder ameen dismisses the suit, as he considers that the plaintiff has derived from the sub-lease usufruct in excess of the Government revenue paid by him, and that when he took

the lease from the defendant, he became liable to pay the Government revenue.

Notice was issued on the respondents on the 8th September 1849. They rest their non-liability to make good this new jumma on the plea that the appellant has realized more than his jumma by his sub-lease of these two villages.

The point to be decided in appeal, is which of these parties is liable to make good the Government revenue on these two resumed and recently settled villages.

#### JUDGMENT.

The appellant takes a farm of several villages from the respondents, Bahadoor Alee and Buharam Alee, and covenants to pay a certain rent to them, and to make good rupees 4717-13, as the Government revenue due from the farm at the time of the lease. Subsequent to this agreement, the Government resumes two of the villages in the farm, and fixes on them a jumma of rupees 965, 7 annas, 9 pie, thus increasing the Government revenue on the farm to rupees 5683, 4 annas, 9 pies. There is nothing in the bond to make the appellant in any way responsible for this additional revenue. Any advantages that the appellant may have derived from his sub-lease of these villages, have nothing to do with the point at issue in this suit. I therefore reverse this decree, and give the appellant a decree in full demand, with costs, against the lessors Bahadoor Alee and Buharam Alee, and as the other defendants are not a party to the lease bond, I exempt them from liability, and hold the appellant answerable for their court expenses.

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THE 5TH FEBRUARY 1851.

No. 20 of 1849.

*Appeal against a decree passed by Moulvee Mahomed Mohamid, late second Principal Sudder Ameen of Tirhoot, on 15th of February 1849.*

Oomrao Thakoor, (Plaintiff,) Appellant,

*versus*

Oodho Dass and Jhoomuk Dass, the heirs of Goshaeen Mokoond Dass, deceased, Hurungee Misser and Keerut Singh, (Defendants,) Respondents.

THIS suit was instituted on the 8th December 1847, for absolute possession and mutation of names as proprietors of 2 annas, of 12 annas, in mouzas Ruttunpore, Ubheeman and Jugutpore, and to recover the sum of rupees 1427-2-8, as mesne profits, accruing from 1249 up to 1254 F. S., under a deed of sale, dated 4th Assin 1247. Suit for Company's rupees 1987-6-11.

The plaint sets forth that the plaintiff was a co-proprietor in this estate which was sold for Government balances and purchased by the defendant Hurungee Misser; that subsequent to the sale, Hurungee Misser admitted the defendant, Mokoond Dass, to a 12 annas share; that Mokoond Dass sold 2 annas of his share to the plaintiff under the above deed of sale drawn out in the name of his nephew Kerut Singh; that possession of the zerat land for this 2 annas share was rendered, and also the proportionate share in the usufruct for the first year after the sale; that since that time the purchase of the plaintiff has not been recognized.

Mohunt Oodho Dass, defendant, heir of Mokoond Dass, in reply, denies the validity of the deed of sale, and declares that no possession has ever been had upon it; that in a boundary dispute between Mokoond Dass and the proprietors of a neighbouring village, in which the present plaintiff was a defendant, no mention was ever made of this purchase, and that Keerut Singh petitioned as a third party in that case in which he declared himself to be the actual purchaser of the 2 annas now in question.

Hurungee Misser, defendant, replies in support of the above defence, whilst Keerut Singh pleads in support of the plaintiff's claim.

The principal sudder ameen dismisses the suit, as the deed of sale is neither registered nor sealed by the kazee, nor is the evidence of the witnesses to it sufficient to prove its validity; he also considers the silence of the plaintiff as regards this alleged purchase in the boundary cause, as well as the declaration of Keerut Singh, that he was the actual purchaser of this 2 annas share, to be corroborating circumstances in favor of the defendants, heirs of Goshein Mokoond Dass, whose possession in 12 annas is proved on evidence.

In appeal, the plaintiff urges his former pleas, and that the deed of sale in his favor is established more particularly by the evidence of Sheikh Shahamut Alee, one of the vakeels of the court, and Shunher Pandey, a relative of both parties in the suit.

The respondents reply as in the first instance.

The point to be decided in appeal is the validity or otherwise of this alleged deed of sale, which is to transfer 2 annas, out of 12 annas, of this estate to the appellant.

#### JUDGMENT.

The deed of sale is alleged to have been executed at Moozufferpore, and is neither registered nor attested by the seal of the kazee, and the evidence of the three witnesses to it is not sufficient to prove the validity. One of them, a vakeel of the court, gives only a hearsay evidence. I therefore agree in the several reasons given by the lower court for dismissing this claim, and uphold the decree, and dismiss the appeal, with costs.

THE 8TH FEBRUARY 1851.

No. 25 of 1849.

*Appeal against a decree passed by Moulvee Niamut Allee Khan, late  
Principal Sudder Ameen of Tirhoot, on 16th February 1849.*

Bucha Chowdree and Musst. Luchmunee, (Plaintiffs,) Appellants,

*versus*

Mr. Henry Christian, (Defendant,) Respondent.

THIS suit was instituted on the 21st July 1848, to recover the sum of 1090 rupees, 9 annas, 11 pie, being the amount principal and interest of balances of rent on a 7 anlia, 8 gundah share, in 55 beegahs of indigo lands, in mouza Teotha, accruing from 1250 up to 1254 F. S.

The plaint is that this share in this estate belongs to the plaintiff, and 8 anna 12 gundahs is the property of Thakurdut Chowdree and others; that a farm of the latter share was let in the name of Hummundutt Doss, to Bugwunt Narain and Ramonoogro Singh, on a lease from 1244 up to 1253; that these parties again sub-let 3 annas to the defendant, on a lease from 1250 up to 1253; that on the strength of this sub-lease, the defendant cultivated these 55 beegahs the best zerat lands of the village in indigo, without the consent of the plaintiffs; that the defendant cultivated a good deal of the assamees lands of the village: besides that, on the expiry of the lease in 1254 Fusly, the indigo khoonties remained for a year on the ground; that the plaintiffs claim their share of the produce in these zerat lands at the rate of six rupees per beegah.

In reply, the defendant pleads that he did not cultivate any of the zerat lands of the village in indigo; that had he done so, he would have taken an agreement from the proprietors; that the indigo cultivation in the village was effected with the assamees in the usual way; that on the expiry of the lease in 1253, he directed the assamees to remove the indigo khoonties and cultivate any crops they pleased; that this suit originates in a dispute taken by him before the criminal courts, which ended in a fine being levied on the plaintiffs.

The principal sudder ameen is of opinion that the plaintiffs do not produce evidence sufficient to prove that the zerat lands of the village were cultivated in indigo by the defendant, and that, if the defendant had really cultivated, as the plaintiffs allege without their consent, either an annual claim for rents would have been preferred, or the matter taken before the criminal court.

In appeal, the plaintiffs urge their former pleas, and add that if the principal sudder ameen was not satisfied with the evidence produced before him, he ought to have appointed an ameen to make local inquiries.

The point to be decided in appeal is whether the present investigation will sustain the dismissal of the appellants' claim.

## JUDGMENT.

The respondent admits the holding a sub-lease of this three anna share, and yet denies that he farmed any of the zerat lands of the village. Now, as the estate is an undivided one, a rateable share in these lands belonged to the farm of the respondent. If the principal sudder ameen was not satisfied with the oral evidence produced by the appellants, it was incumbent on him, in the face of this denial of respondent, either to make a local inquiry himself, or depute an ameen to do so, and as I consider the investigation in this suit to be incomplete, without this inquiry, I reverse the decree, and direct a re-investigation of the case as above indicated, and a refund of the stamp value to the appellant.

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THE 11TH FEBRUARY 1851.

No. 28 of 1849.

*Appeal against a decree passed by Syud Mahomed Mohamid, second Principal Sudder Ameen of Tirhoot, on 16th February 1849.*

Baboo Luchmeenarain Singh, Defendant, Appellant in the suit of  
Musst. Zumeerun, (Plaintiff,) Respondent,

*versus*

Appellant Musst. Beeznah Begum and Meer Bunyad Aleo,  
Defendants.

THIS action was preferred on the 30th June 1846, to recover the sum of 794 rupees, 12 annas, 6 pie, being the amount principal and interest due on account of revenue paid in for the villages of Singheeah Buzoorg, Moortezapore Madhupore, and Uzeearpore.

The plaint is that these villages are a resumed rent-free mehal; that the plaintiff was rent-freeholder of 12 annas, and the remaining rent-free 4 annas, and the 16 annas milkeut vested in the defendant, Baboo Luchmeenarain; that the plaintiff was first admitted to a settlement for 12 annas; that the defendant, Musst. Beeznah, set up a claim, subsequently, to a 3 anna share in these 12 annas, and was admitted to a settlement to that extent; that on the plaintiff's refusing to enter into fresh settlement for a 9 anna share, it was let in farm on a ten years' lease to Baboo Luchmeenarain; that the plaintiff subsequently established in court her right to the 12 annas, and was admitted to a settlement accordingly; that the plaintiff paid up 588, 4 annas, 6 pie, as Government revenue during the incumbency of Baboo Luchmeenarain and Musst. Beeznah Begum, and this sum was credited to them in their revenue liabilities.

The defendant, Luchmeenarain Singh, in his reply, pleads that the plaintiff ought to be nonsuited for not specifying the amount due to her for the 9 anna and 3 anna occupants; that 561 rupees, 12 annas, 6 pie was paid up at different times by the plaintiff; that



this sum was allowed for in the revenue liabilities on the 12 annas share; that rupees 421-3-6 was credited to his 9 annas share, and rupees 140-7-1½, to the 3 annas share of Musst. Beeznah; that no interest is claimable prior to the date on which this account was made out; that the defendant has paid in revenue due from the share of the plaintiff after she came into re-possession, and that his action on this account has been anticipated by the present suit.

Musst. Beeznah, in reply, pleads that 12 annas do not belong to the plaintiff, and that until her right is established this claim cannot be maintained.

Bunyard Alee, defendant, does not defend the suit.

The principal sudder ameen decrees the plaintiff's claim against Baboo Luchmeenarain Singh, and exempts the other two defendants from liability. Observing that, as he has just given the Baboo a decree against the plaintiff in another suit, the reasons given in that award secure a decree for the plaintiff in the present suit.

In appeal, the defendant, Luchmeenarain Singh, pleads that the plaintiff ought to have been nonsuited for instituting one action for revenue paid in for several separate villages; that the interest awarded is excessive; that the amount here claimed has been allowed for in his action against the plaintiff; that Musst. Beeznah ought to have been made liable for a 3 anna share in this claim.

Notice was served on the respondent by the judge on the 7th January 1850, who pleads, in reply to the moojubat of the appellant, that the villages are one lot, and the whole liable for sale in the event of a balance accruing in any one of the villages; that the claim is a just one and has been fairly adjudged.

The points to be decided in appeal are, first, whether or no a separate suit for each village is required; second, whether the award of interest is correct; third, whether the amount now claimed has been credited to the respondent in the suit of the appellant; and, lastly, whether or no Musst. Beeznah is liable.

#### JUDGMENT.

The documentary evidence in this case shows that these four villages were assessed with separate and distinct jummas; it was therefore incumbent on the plaintiff to prefer her claim against each village in a separate suit, and also to specify the amount claimed from each of the defendants.

This not having been the case, I am obliged to decree the appeal, and nonsuit the claim, with costs against the respondent.

THE 11TH FEBRUARY 1851.

No. 29 of 1849.

*Appeal against a decree passed by Syud Mahomed Mohamid, late second Principal Sudder Ameen of Tirhoot, on 16th February 1849.*

Baboo Luchmeenarain Singh, (Plaintiff,) Appellant,

*versus*

Musst. Zumeerun, Beeznah Begum, and Beebee Fukcera, widow of Meer Bunyad Ali, (Defendants,) Respondents.

THIS suit was instituted on 8th December 1846, to recover the sum of rupees 1503-15-9, being the amount principal and interest of surplus revenue paid in for a 12 anna share, in mouza Singeah Boozoorg.

The plaint is that the milkeut rights of this estate, and 4 annas in nankar title vested in the plaintiff, and 12 annas nankar was the property of the defendants; that the nankar was resumed, and, on the 1st May 1843, 4 annas, as his own share, and a farm of 9 annas, as the share of Musst. Zumeerun, was settled with the plaintiff, and 3 annas was settled for with Musst. Beeznah Begum; that this settlement was set aside, and, in 1st May 1846, Musst. Zumeerun was admitted to a settlement of the 12 annas resumed nankar; that the Government revenue on the estate was paid by the plaintiff up to the end of April 1846, on the 3 annas, for one year, and subsequently on the 12 annas share.

Musst. Zumeerun, defendant, in reply, pleads that prior to 1st May 1846, she had no possession in the 3 annas, and that 10 annas kist in the revenue for 1846, on the 12 annas share, is due from the plaintiff, and 6 annas kist for herself; that the plaintiff made the collections for the whole of that year, and the revenue paid by him was realized from the usufruct of the whole village.

Musst. Beeznah, in reply, admits that the settlement of the 3 annas share was made with her in 1843, but that she had no regular possession in consequence of the interference of Musst. Zumeerun; that she has paid 150 rupees of revenue, and the plaintiff admits having received rupees 454-15-9 from her; that the plaintiff has collected rupees 175-10 from this share in the estate, and, therefore, has no further claim.

The principal sudder ameen passes a decree in favor of the plaintiff, holding Musst. Zumeerun liable for rupees 988-4-7, as her share of the surplus revenue paid in on the 12 annas share for 1846, and Musst. Beeznah Beegum liable for rupees 366-8, as the amount due on account of the 3 annas share, after exempting the sum of 150 rupees paid in by Beeznah Begum, for which she has filed a dakhilla of the collectory.

In appeal, the plaintiff urges that he allowed in the plaint for the payment of 150 rupees, on the part of Musst. Beeznah, and that this sum ought to have been decreed.

Notices were served on the respondents on the 7th January 1850, by the judge.

Musst. Beeznah does not reply; but Musst. Zumeerun claims exemption from the law costs in appeal, as the cause of appeal only applies to Musst. Beeznah.

The points to be decided, in appeal, are whether or no the appellant Musst. Beeznah is liable for the 150 rupees, and whether Musst. Zumeerun is liable for her own costs, in appeal.

#### JUDGMENT.

The annual Government revenue assessed on this 3 anna share is rupees 558-11-11, and the appellant has paid on an account of this share for A. D. 1844, rupees 322-3. The respondent, Musst. Beeznah, produces dakhillas to show that she has paid in 150 rupees of revenue for that year; but to establish her non-liability to pay the whole amount of the appellant's claim, receipts for payment of rupees 236-8-11 are required. I, therefore, consider the principal sudder ameen was wrong to strike this 150 rupees out of the claim of the appellant, and I amend the decree, and decree the 150 rupees, with costs calculated accordingly; and since the appellant has made Musst. Zumeerun a respondent, on a point in no way concerning her, I hold him responsible for the court expenses in appeal of Musst. Zumeerun.

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THE 12TH FEBRUARY 1851.

No. 35 of 1849.

*Appeal against a decree passed by Moulvee Neamut Ali Khan, late Principal Sudder Ameen of this district, on 16th March 1849.*

Gopalnath Chowdry and sixteen others, (Defendants,) Appellants,

*versus*

Keruthnath Misser and four others, (Plaintiffs,) Respondents.

THIS suit was instituted on the 5th September 1842, to decide a title, and for possession in 12 beegahs, 4 cottahs of burmotur lands, in the village of Mobarukpore. Suit valued at 658 rupees, 3 annas, 6 pie, eighteen times the income.

The plaint is that this holding was acquired by the ancestors of the plaintiffs in seventeen lots and under different sunnuds granted by the several proprietors of the estate prior to the reign of the Sircar; that up to 1242 Fusly, the plaintiffs and their forefathers have enjoyed undisturbed possession of the lands; that when the mokurree rights of Mobarukpore were resumed and one Qud Lall ameen appointed to measure the estate, the lands, now disputed pleas

8 beegahs, 16 biswas, in all 21 beegahs, were recorded in his papers as burmootter lands; that the settlement officer settled the estate with the proprietors after exempting the 21 beegahs; that in 1242 Fusly, Mobarukpore was sold for sudder balances and purchased by Chetoo Chowdree, who granted a wogozasth chittee to plaintiffs; but in 1243, the estate was sold to the defendants who dispossessed the plaintiffs, and this claim is for re-possession, and to recover mesne profits from the date of dispossession. The defendants, in reply, plead that the lands now claimed by the plaintiffs are not burmootter, and never were in possession of the plaintiffs; that these lands were not part or parcel of the 21 beegahs recorded as burmootter lands in the settlement of 1227 Fusly; that if the plaintiffs were dispossessed as they allege, they would have sought redress in the criminal court; that the estate prior to the settlement was in the possession of the minhadars, so that the proprietors could have made no grants; that the plaintiffs are merely cultivators in the estate; that no sunnuds have ever been produced, and no registry of this rent-free holding effected in the records of the collector's office. On the 24th June 1843, Syed Salamut Ally Khan, the then sudder ameen, decreed possession and mesne profits to the plaintiffs, and this decree was upheld in appeal before the principal sudder ameen. In special appeal before the Sudder, these decrees were reversed, and a review of judgment directed, a reference having been first made to the collector in conformity with Clause 3, Regulation II. of 1819. The principal sudder ameen then returned the case to the sudder ameen who, after fulfilling the requirements of the regulation, quoted by the Sudder, again passed a decree in favor of the plaintiffs, as the collector's report proved the existence of their burmootter lands, and the inquiry of the ameen the occupancy of the plaintiffs. On the 20th April 1847, the principal sudder ameen confirmed this decree in appeal, and on 29th February 1848, these decrees were again reversed by the Sudder, in special appeal, and the principal sudder ameen directed to retain the case in his own file, and decide it on its merits. The principal sudder ameen, in this instance, has decreed to the plaintiffs possession and mesne profits from the date of institution of this suit, taking the same view of the case as the former judicial authorities.

In appeal, the defendants urge their former pleas, and add that, as the suit has been twice returned by the Sudder for re-investigation, the principal sudder ameen ought to have called for fresh evidence in the case.

Notice was issued on the respondents by the judge on the 8th of January 1850, and their reply is an epitome of the merits of the case from first to last.

The point to be disposed of in appeal, is to which of these parties do the lands now claimed belong, is this a rent-free holding of the respondents, or are the lands nizamat the property of the appellant?

## JUDGMENT.

Four judges and a collector have decided in favor of the respondents who have been subjected to a long course of law in establishing their claim upon full and ample evidence both documentary and oral. The appellants are unable to subvert the evidence of the respondents in any way. I therefore confirm this decree, and dismiss the appeal, with all costs on the appellants.

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THE 14TH FEBRUARY 1851.

No. 45 of 1849.

*Appeal against a decree passed by Moulvee Neamut Ali Khan, late Principal Sudder Ameen of this District, on 17th May 1849.*

Achumbit Sahi, Chitadarhee Sahi and nine others, the heirs of Luchmun Sahi and Saboor Sahi, (Defendants,) Appellants, in the suit of Beechuk Sahi and Chadee Sahi, (Plaintiffs,) Respondents,

*versus*

Appellants and Badil Sahi, and ten others, (Defendants.)

THIS suit was instituted on the 11th November 1847, to partition off a third share in 204 b. 15 d. out of 306 b. 1 b. 13 d. new measurement, the malikana lands of Rajkhund. Suit valued at rupees 1496 4 annas 5 p., the estimated value of the share.

The plaint is that the 300 beegahs of malikana lands of mouza Rajkhund is in three equal shares, one share belongs to Munbood Sahi and others, and the other two shares, one held in three equal shares by the plaintiffs and the defendants, the heirs of Luchmun Sahi and Saboor Sahi, who refuse to divide the estate.

The defendant, Badil Sahi, one of the heirs of Saboor Sahi, in his reply, pleads that he has disposed of his ancestral rights in this estate; that one share in these 300 beegahs is the property of Munbood Sahi and others, and one share belonged to Jugut Rai, and is now the property, in three equal shares, of the plaintiffs and Achumbit Sahi and Chutterdharree Sahi; that the third share is also held by Achumbit and Chutterdharree, the right of an exchange with Kurun Singh Rai for a share they also held in the malikana lands of mouza Jurooka; that the plaintiffs have only a right in a third share of one of the hundred beegah shares.

Achumbit Sahi and Chutterdharree Sahi, defendants, in reply, plead that the plaintiffs have never had any possession in the third share of the 100 beegahs; that Doss Rai, forefather of both parties in the suit, died leaving three sons, first, Ajeeb Rai, the ancestor of Munbood Sahi and others, second, Kurrin Singh Rai, three, Deo Singh Rai; that Deo Singh Rai left two sons, Pahar Singh Rai and Juggut Singh Rai; that Juggut Singh Rai acquired the share of Pahar Singh Rai, and died leaving three sons

Keharee Sahi, Hurgobind Sahi, and Dhurma Sahi; that Keharee Sahi was succeeded by his son Luchmun Sahi, the ancestor of Achumbit Sahi and others, (defendants); that Hurgobind Sahi was succeeded by Saboor Sahi, the ancestor of the defendants Chutterdharree Sahi and others; that Dhurmun Sahi left his son Puttee Sahi, the fathers of the plaintiffs; that, consequently, the plaintiffs can only inherit a third share in one of the one hundred beegahs share; that the ancestral rights of Kurrin Singh Rai were exchanged by his heirs for the malikana share of Luchmun Sahi in mouza Jurooah, under a deed dated 5th Assar 1196 Fusly, and that Luchmun Sahi admitted Saboor Sahi into partnership for this one hundred beegah share. Towukul Sahi and five others, defendants, heirs of Mohagowar Sahi, co-sharer with Luchmun Sahi, plead in favor of the plaintiffs claim, and Gowree Sahi and three others, also descendants from a co-sharer with Saboor Sahi, plead to the same effect.

Apooch Sahi and others, as third parties, petition that this third share in dispute belongs to them. Mohadeo Sahi petitions in support of the defendants, Achumbit Sahi and others.

Munbood Sahi and Mohun Sahi petition in support of the plaintiffs.

Jeeoe Sahi petitions that he is a sharer in this property, and ought to have been made defendant. Ramodhonee Sahi petitions in support of the defendants Achumbit Sahi and others.

Rambuksh Sahi, Girdharee Sahi, and Lollah Sahi petition separately, that they are joint proprietors in mouza Jeerrooah, and ought to have been recorded as such.

Nursingnurain *alias* Toljee petitions that he has a proprietary right by purchase in these lands and ought to have been made defendant.

Beekdharee Singh and four others petition that they have also purchased into this property and ought to have been made defendants.

The principal sudder ameen considers both the right as well as the possession of the plaintiffs is proved on evidence, and passes a decree in their favor, observing that the plaintiffs and the defendants have been joint suitors in an action against the proprietors of mouza Jurrooah, and it was then admitted by the defendants that the plaintiffs were joint sharers with them in this hundred beegahs of exchanged lands; that the measurement papers at the time of settlement prove that the plaintiffs occupied in both the two hundred beegah shares.

In appeal, the defendants urge that the plaintiffs were in possession of only 33 beegahs, 6 biswas, in right of their ancestral share in one hundred beegahs, and that their rights do not extend to, and they have never held possession in the one hundred beegahs they admit to have been exchanged with Jurooah.

Notice was served on the respondents on the 7th January 1850, and in their present reply, they repeat their former pleas, and declare their right and possession in both share to be fully established.

The point to be decided, in appeal, is whether or no the respondents' possession in the lands he now seeks to have portioned off is established or not.

#### JUDGMENT.

I consider that the principal sudder ameen has gone beyond the record in this case in his inquiry into proprietary rights. A right of proprietorship is not to be decided in a suit of this nature. The only inquiry requisite to support an award for petition is whether or no the claimant is actually in possession of the lands he wishes to have divided off. Now, in this case, I do not agree with the lower court that the occupancy of the respondents to the extent they allege is established on evidence. Document No. 29 is the only paper filed in this case, on which a safe judgment can be passed; this shows up by whom the 300 beegahs of malikana lands in Rajkhund were occupied at the time the investigation prior to the settlement of 1838, took place. The respondents are only recorded as occupants in lots Nos. 1003, 1004, 1016 and 1019, which place a little more than 23 beegahs in the occupation of the respondents. The respondents claim to portion off a third share in 204 beegahs, 15 dhoors, or 68-45th beegahs, and as they fail to establish their actual possession to this extent, I decree this appeal, and reverse the decree, with cost on respondents.

THE 14TH FEBRUARY 1851.

No. 48 of 1849.

*Appeal against a decree passed by Moulvee Neamat Ali Khan, late Principal Sudder Ameen of this district, on 14th May 1849.*

Musst. Nowazee Begum, (Plaintiff,) Appellant,

*versus*

Sheik Ashruff Alee, Sheik Reazut Alee and the heirs of Kunya Chowdree, Meer Syud Alee, husband of Musst. Zigree Begum, 1st party, and Meer Hydyat Alee Khan, Meer Salamut Alee Khan, and Musst. Poonee Begum, heirs of Musst. Budurool-nissa Heaton, 2nd party, (Defendants,) Respondents.

This suit was instituted on the 7th February 1847 for possession in and mutation of names as proprietors of two annas in mouza Mussah, and to recover the sum of rupees 449-10-10 as mespe profits accruing from 1251 up to 1254 Fusly.

Suit valued at rupees 994-3-7.

SULLAN REPORT.

The plaint is that the defendant, Jigree Begum, made an out and out sale of her two annas share in Mussah to the plaintiff, under a deed of sale, dated 15th Maugh 1249 Fusly, and possession was rendered accordingly; that the plaintiff realized the rents on her share from Mr. Richardson, who held the estate in farm; that the estate was sold in satisfaction of decree of the Rajah of Durbungah had against the heirs of Musst. Budurool-nissa, and was purchased by the defendants, Moulvee Ushruff Alee, Reazut Alee and Kunya Singh Chowdree; that the purchasers have dispossessed the plaintiff; that the deed of sale to the plaintiff is dated prior to the decree sale; that no notices of the sale ever reached the plaintiff; that the decree was irregular in many respects and ought to be set aside.

The defendant, the husband of the vendor Jigree Begum, confesses judgment and admits the validity of the deed of sale to the plaintiff.

The defendants, purchasers at the decree sale, plead, in reply, that this is an action to reverse the sale of a portion of the estate sold, and is opposed to Construction No. 1040; that the action to try this question must be brought by the vendor; that there was no irregularity in the sale; that the alleged purchase by the plaintiff took place whilst the estate of the vendor was in lien for an established claim against her; that no objection at the decree sale was ever made by the plaintiff.

The principal sudder ameen dismisses the suit, as he considers that the plaintiff does not establish the validity of the deed of sale, nor does she prove her possession after purchase, and that his reasons for arriving at this conclusion are fully recorded in case No. 47 just disposed of. On sending for the decree of the lower court, in the case quoted above, I find that to have been an action brought by the auction purchasers at the decree sale for possession in 12 annas of mouza Mussah as the rights and interests of the parties sold up, and the principal sudder ameen records his reasons for declaring the deed of sale to the plaintiff to be invalid in the following remarks: that the irregularity or otherwise of the decree sale is not at issue in the present suit; that this property was in lien to the decree-holder prior to the date of the deed of sale; that this sale is alleged to have been effected through the agency of Surroop Lal, and neither his signature nor seal is attached to the document; that none of the witnesses to the sale depose to the sale or purchase having been completed in the usual manner between the vendor and vendee, nor are they able to depose to the date, month or year of the transaction; that no objections were urged by the appellant at the time of the decree sale, and no possession is proved on the part of the purchaser subsequent to her purchase; that the three receipts for proving rents produced to establish this point are signed by Musst. Jigree Begum, the vendor.



In appeal, the plaintiff urges that the evidence of all her witnesses has not been taken, and that her purchase is clearly established.

Notices were issued on the respondents by the judge on 7th January 1850, who reply in support of the principal sudder ameen's view of the case.

The point to be decided, in appeal, is the validity or otherwise of this alleged deed of sale.

#### JUDGMENT.

The evidence of the witnesses to the deed of sale is quite insufficient to prove its validity, and the whole features of the case show that this is a palpable attempt to defraud the respondents, the auction purchasers, of a portion of the estate bought by them. I, therefore, uphold this decree, and dismiss the appeal, with all costs on the appellants.

THE 15TH FEBRUARY, 1851.

No. 51 of 1849.

*Appeal against a decree passed by Moulvee Neamat Ali Khan, late  
Principal Sudder Ameen of this district, on 30th May 1849.*

Musst. Butaso Koer, widow of Jewan Ram, Defendant, Appellant,  
in the suit of Syud Tusudook Hossein and Musst. Fuzeeloot-nissa,  
and Tilukdharee Singh, (Plaintiffs,) Respondents,

*versus*

The Appellant and Bolakee Lal, and three others, heirs of  
Imrut Lal, Defendants.

THIS suit was instituted on the 21st September 1847, for possession in 13 beegahs, 10 biswas of land, in mouza Rampore Nosohun, and to set aside a proceeding in the survey department, dated 21st March 1846, and to recover the sum of rupees 404-9-3 as mesne profits accruing between 1246 and 1254 Fusly. Suit valued at rupees 1269-9-3.

The plaint is that this village was let in farm to the plaintiff Tiloukdharee Singh, by the other two plaintiffs; that the defendant, Jewan Ram, cultivated 6 beegahs, 14 biswas, 13 dhoors, in the village; that the farmer sued him for rent accruing from 1250, up to 1254; that in that suit, the defendant, Jewan Ram, claimed the land as appertaining to his village of Noabad Khoord; that whilst this suit was pending, the defendants contrived to get this land, and other land amounting in all to 13 beegahs, 10 biswas, included by the survey in the area of Noabad; that the claim for rent was consequently nonsuited, and this action for possession has arisen; that these lands are included in the settlement papers of Rampore, from Nos. 146 to 171.

Musst. Butaso, widow of Jewan Ram, defendant, in reply, pleads that these lands were included in the hulkah of Noabad after full inquiry by the survey officer; that the lands were included fraudulently in the settlement of Rampore, and without the knowledge of Jewan Ram; that the plaintiffs have never been in possession; that the boundaries of the two village are not adjacent; that if Jewan Ram did cultivate under the plaintiffs, his agreement to this effect can be produced; that had it been so, it is not likely that he would have planted trees and built houses on the land in dispute.

The other defendants do not defend the case.

Jankee Ram, and another as a third party, petition as claimants for the lands in dispute, and declare this claim to be groundless and the defence untrue.

Another party supports the above, whilst Radha Beebee petitions claiming a share in Noabad.

The principal sulder ameen is of opinion that as these lands were included in the settlement of Rampore, the court has no jurisdiction to disturb the settlement; that the surveyor was consequently wrong in admitting the lands into the hulkah of Noabad: a decree is therefore passed against Jewan Ram in favor of the plaintiffs' claim for possession, with mesne profits from the kist of 1246 up to 1254, at the rate of 30 rupees, 11 annas, 14 gundahs per annum, according to the jummaabundee at the time of the settlement. The principal sulder ameen quotes as a precedent to support his judgment in this case, a decision of the Sudder Dewanny Adawlut, dated 24th May 1844, and Construction No. 1371.

In appeal, the defendant urges his former pleas.

Notice was served on the respondents by the judge on the 8th January 1850, and their reply is in support of the decree passed in their favor.

The point to be disposed of, in appeal, is to which of these two parties the lands in question legally belong.

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#### JUDGMENT. .

It is fully proved, and, indeed, the appellant admits that these lands were included in the settlement of the respondents' village of Rampore; any decree, therefore, passed in her favor would be virtually to disturb a settlement which is beyond the power of the civil courts. The precedent quoted by the lower court applies, and the proceedings of the Sudder of the 17th July 1847, on the petition of Hurgobind Ghose, are still more to the point at issue in the present case. I, therefore, uphold this decree, and dismiss the appeal, with costs.

THE 17TH FEBRUARY 1851.

No. 16 of 1849.

*Appeal against a decree passed by Pundit Dataram, Moonsiff of Teigrah,  
on 26th December 1848.*

Ramdyal Misser, (Defendant,) Appellant,

*versus*

Doorg Bejoy Chowdree and Gungah Chowdree, (Plaintiffs,) Respondents.

THIS suit was instituted on 4th August 1848, to recover the sum of 45 rupees, 3 annas, 3 pie, being the amount principal and interest due on account of rent balances accruing from 1251 up to 1253 and 1255 Fusly.

The plaint is that during the period that the plaintiffs held Putnee Chout in mouza Gobindpore in farm, the defendant who cultivated on the farm, fell into balances of rent to the amount now claimed.

The defendant, in reply, pleads that his cultivation in Gobindpore amounts to 17 beegahs, 6 cottahs, 6 dhoors, which he has held for the last fifty years at the annual fixed jumma of 27 rupees, 2 annas, 6 pie; that he has paid rents to the plaintiff on this extent of cultivation and at this rate.

The moonsiff considers that the evidence of two putwarries proves that the defendant did cultivate to the extent named in the plaint, and that a balance of rupees 31-5-3 is due from him on account.

In appeal, the defendant urges that the moonsiff ought to have appointed an ameen to make a local inquiry as to the actual extent of the land cultivated, and also as to the right of the appellant to cultivate at a fixed rate.

The point to be decided, in appeal, is whether the balances decreed are proved against the defendant.

#### JUDGMENT.

The plaint as well as the evidence of the putwarry declare that the appellant entered into a written agreement to cultivate; but the kubooleut is neither filed nor has it been called for, and there is a discrepancy of 5 beegahs, 3 biswas, 16 dhoors between the extent of the cultivation said to be recorded in the agreement, and the extent of cultivation on which rents are now claimed. A further inquiry in this case is required, as above indicated, and the decree is, therefore, reversed, and a fresh investigation directed, and the stamp value is to be returned to the appellant.

THE 17TH FEBRUARY 1851.

No. 18 of 1849.

*Appeal against a decree passed by Baboo Bishun Lal, Moonsiff of  
Dulsing Serai, on 20th December 1848.*

Soophul Roy and three others, (Defendants,) Appellants,

*versus*

Rith Lol, (Plaintiff,) Respondent.

THIS suit was instituted on 4th October 1844, to recover the sum of 40 rupees, 10 annas, being the amount principal and interest of balances accruing from 1248 up to 1250 Fusly, for cultivation in the village of Moondah.

The plaint is that during the period that the plaintiff held a sub-lease of four annas of this village, the defendants cultivated in the estate, and are in balances to the amount now claimed.

The defendant, Soophul, in reply, pleads that this is an undivided estate, and that Dulzeet Chowdree and Surubjeet Chowdree make the collections from the whole village; that he cultivated 13 beegahs and paid the rents up to 1248 Fusly; that the proprietors then took the lands into their own cultivation and granted him a receipt in full of all demand up to 1248; that 7 cottahs of rice land remained in his cultivation; that the crops failed and the value of 5 seers of mowah is the only balance against him; that the other defendants are not cultivators.

The other defendants do not defend the suit. Surubjeet Chowdree and Duljeet Chowdree petition as a third party, and deny having received the rents from Soophul Roy. Thumun Roy and others also petition as a third party in support of the allegation of Soophul Roy.

On the 23rd August 1845, the moonsiff, after exempting 9 annas of the claim as interest not due, passes a decree in favor of the plaintiff against all the defendants, considering that the claim is established on the proof adduced by him for the prosecution.

This decree was reversed in appeal before the then additional judge, and a re-investigation directed on 8th September 1846.

The moonsiff in this instance, has passed a decree similar to the former one, observing that the defendants have failed to cause the attendance of Chowdree Duljeet to identify this receipt, and also have allowed a year to elapse without having complied with the court's requisition to enter an ameen's fees.

The defendants, in appeal, plead that as the extent of cultivation was not disputed, the appointment of an ameen would have been superfluous, and that the petition of Thumun Rai, &c., is sufficient to prove the payments they declare to have made.

The point to be decided in appeal is whether or no the sum decreed was due to plaintiff from the defendants.

## JUDGMENT.

I agree with the moonsiff in passing this decree in favor of the plaintiff. The appellants have totally failed in proving payment of rent to any other party, and their cultivation from 1248 up to 1250 is proved on evidence. The appeal is therefore dismissed, and the decree upheld, without issuing notice on respondent.

THE 17TH FEBRUARY 1851.

No. 19 of 1849.

*Appeal against a decree passed by Babão Bishen Loll, Moonsiff of  
Dulsing Serai, on 22nd December 1848.*

Mussts. Raj Bunsee Kooer and Phool Kooer, (Plaintiffs,)  
Appellants,

*versus*

Mohngbeer and four others, (Defendants,) Respondents.

THIS suit was instituted on 14th June 1847, to recover the sum of 15 rupees, 6 annas, 9 pie, being the amount principal and interest of balances of rent for 1253 Fusly, and to set aside a decision of the deputy collector, dated 16th June 1846.

The plaint is that the village of Nursingpore is the property of the plaintiffs, and the defendants cultivate 5 beegahs in the estate, and refuse to pay the rent; that the plaintiffs distrain for the rent, but the deputy collector decided in favor of the defendants on the representation of an ameen, that these lands are a sheotur rent-free holding of the defendants. The defendants, in reply, plead that beyond this rent-free holding, they have no cultivation in the village of the plaintiffs, and are not, therefore, liable in any way for rent, but they have held this 8 beegahs rent-free from the last 48 years.

The moonsiff dismisses the claim, as he considers that the productions of the sunnud, and the evidence of respectable witnesses, prove this to be a rent-free holding of the defendants.

In appeal, the plaintiffs declare the sunnud a forgery, and that a third ameen ought to have been appointed to make a local inquiry.

The point to be decided in appeal is the liability or otherwise of these 5 beegahs to be assessed for rents.

## JUDGMENT.

I agree in opinion with the moonsiff, that the respondents produce ample evidence to prove that their holding is rent-free, and, therefore, uphold the decree, and dismiss the appeal, without issuing notices on the respondents.

THE 19TH FEBRUARY 1851.

No. 20 of 1849.

*Appeal against a decree passed by Pundit Dataram, Moonsiff of Teigrah, on 22nd December 1848.*

Gopee Patuck and two others, (Defendants,) Appellants in the suit of Surrubjeet Patuck, (Plaintiff,) Respondent,

*versus*

Appellants and Doorgah Patuck, (Defendants.)

THIS suit was instituted on 28th August 1848, to recover the sum of 5 rupees, 1 anna, the amount principal and interest of rent due for 1 beegah of burmooter land appertaining to Muksoospore, for 1254 and 1255 Fusly.

The plaint is that the plaintiff is in possession of 2 beegahs, 4 cotahs land in this village by virtue of a grant made to him by the proprietors under a sunnud, dated 1st Assin 1250; that the defendants cultivated 1 beegah without pottah or kubooleet; that they have paid 1 rupee of rent, and the action is to recover the balances due.

In reply, the defendants deny that they are cultivators, and declare themselves to be joint grantees with the plaintiff under a former grant, and that they held this 1 beegah as their share in the grant divided off to them the year after the fresh sunnud was executed in favor of the plaintiff.

The moonsiff decrees for the plaintiff considering that, as the sunnud of 1250 is only in the name of the plaintiff, he is entitled the rent; that the decree is not in any way to rule any proprietary right to which the defendants may lay claim.

In appeal, the defendants urge their original pleas.

The point to be decided in appeal is whether or no the plaintiff establishes his claim for rent by the evidence adduced.

#### JUDGMENT.

It is on evidence that the plaintiff is the grandfather of one defendant and the uncle of another, and the defendants declare to be joint grantees with the plaintiff, and that the sunnud is only in the name of the plaintiff, because he is the representation of the family circle. The first point for inquiry, in this case, is the possession of the plaintiff as sole proprietor, and as he can find nothing on record sufficient to prove this, and there is no agreement between the parties to cultivate, and the moonsiff does not record the grounds in which he considers this point to be established, I reverse this decree, and return the case for inquiry as above indicated, and direct that the moonsiff will record his reasons in full if he considers the possession of the respondent alone in virtue of the sunnud of 1250 to be established, after further investigation, and the usual order is passed for a refund of stamp value.

THE 19TH FEBRUARY 1851.

No. 21 of 1849.

*Appeal against a decree passed by Pundit Dataram, Moonsiff of Teigrah, on 21st December 1848.*Shah Uhsun Ally and three others, third party, Appellants in the  
suit of Nam Dharee Singh, (Plaintiffs,)*versus*

Hur Bhunzun and five others, (Defendants.)

THIS suit was instituted on 30th October 1848, for possession, and to be recorded as proprietors in 1 gundah, 2 cowrees, in 2 annas 8 gundahs share in talooka Jaferpore. Suit valued at 30 rupees, three times the rent roll,

The plaint is that the defendants made out and out sale of this share to the plaintiffs under a deed of sale, dated 1st April 1847; that possession was duly rendered; that the mutation of names is resisted.

The defendants, in reply, confess judgment, and plead that the whole of the purchase money was not paid, and the mutation of names was resisted in consequence. The appellants' petition as a third party, that this is a false suit on a pretended deed of sale set up to injure them in the execution of a decree had against the defendants for rents; that the deed is antedated and the suit instituted six days prior to the date in which the decree sale was to take place, and that the sale was stayed in consequence.

The moonsiff, after taking the evidence of the subscribing witnesses to the deed of sale underdated 25th April 1847, considers that the deed of sale was completed in all respects, and passes a decree in favor of the plaintiff, observing that, according to para. 2 of this Circular, the third party to the suit is in no way injured.

In appeal, the third party urge that they are injured by this decree.

The point to be decided in appeal is whether or no the appellants are injured by this decree or not.

## JUDGMENT.

The Circular Order, 25th March 1847, para. 2, rules that no decree for real property, founded on confession of judgment, shall be admitted to bar the sale of *rights* and *interests* in such property in execution of a money decree. The appellants have consequently no reason whatever for appeal. The moonsiff could not have decreed in any other way than he has done. I, therefore, dismiss this appeal.

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## THE 20TH FEBRUARY 1851.

Nos. 25, 26, 27, 28 and 29 of 1849.

*Appeal against a decree passed by Pundit Dataram, Moonsiff of Teigrah, on 6th January 1849.*

No. 25, Bundho Roy, and others, (Defendants,) Appellants,  
 „ 26, Horil Roy, (Defendant,) Appellant,  
 „ 27, Dureao Roy, (Defendant,) Appellant,  
 „ 28, Thumun Roy, (Defendant,) Appellant,  
 „ 29, Chumun Roy, (Defendant,) Appellant, in the suits of  
 Durbaree Lal and two others, (Plaintiffs,) Respondents,

versus

The several (Defendants,) Appellants.

THESE suits were instituted on the 28th August 1848, to recover various sums of money due on account of balances accruing in 1255 Fusly.

The plaintiffs are that the defendants cultivated in mouza Gobind-poor the estate of the plaintiffs, and have fallen into the balances now claimed; that the plaintiffs failed in their attempt to distrain the crops of these five defaulters.

In reply, the defendants plead that they hold their lands under a malikana and mookururee title from the former proprietor of the estate, and that they have offered payment of rents to the plaintiffs according to their mookururee jumma.

The moonsiff is of opinion that the evidence of the witnesses of the plaintiffs, and copies of several decrees and orders filed by them, fully support their claim for rents for the lands cultivated by the defendants. Moreover, the defendants have been referred to a civil suit to decide on their claim to a mookururee title in the lands and have failed to do so. The claims of the plaintiffs are, therefore, decreed in each suit.

In appeal, the defendants urge that their rights are established, and that as they are in possession, it was not requisite in them to sue to establish their claims.

The point to be decided in appeal is whether or no the plaintiff makes out his claim for these balances against the defendants.

## JUDGMENT.

The copies of decrees of the moonsiff, dated 17th December 1845, confirmed in appeal before the then additional judge, 20th August 1847, filed by the respondents, show clearly that the plea of mookururee holding urged by the appellants, a third party in those suits, was overruled, and rents were decreed to the plaintiffs against cultivators on the lands now in dispute; consequently, a decree to the same effect must pass in these suits. I therefore uphold



these decrees, and dismiss the appeals, without issuing notices on respondents.

THE 20TH FEBRUARY 1851.

No. 24 of 1849.

*Appeal against a decree passed by Baboo Bishun Lal, Moonsiff of Dulsing Serai, on 30th December 1848.*

Gonesh Dutt Chowdhree and three others, sons of Gopal Chowdhree, deceased, (Plaintiffs,) Appellants,

*versus*

Imrit Koer, (Defendant,) Respondent.

THIS suit was instituted on the 21st July 1847, to recover the sum of 64 rupees as balances of rents accruing in 1252, 1253 and 1254 Fusly.

The plaint is that the defendant cultivated 8 beegahs, 2 biswas, 10 dhoors of land, on a farm held by the plaintiffs in mouza Bahadoorpore, and balances to the amount now claimed have accrued against him.

The defendant, in reply, pleads that he has paid more rent than he is liable for, and has a balance in his favor against the plaintiffs; that his rent has been paid at the rates fixed by the proprietors of the farm.

The moonsiff passes a decree in favor of the plaintiff for 1 rupee, 14 annas, 9 pie, with court expenses rated accordingly, as he considers that the plaintiffs' claim is to enhance the rent of the defendant, who is only liable at the rates fixed by the proprietors.

In appeal, the plaintiffs urge that the occupant is the party to fix the rates of rent, and that the claim is according to the value of the lands cultivated by the defendant.

The point to be decided in appeal is whether or no the rates fixed by the proprietors in these lands are to rule the rents due to the appellants or not.

#### JUDGMENT.

The appellants are only farmers, and have no power, without due notice to the cultivator, to raise rents fixed by the proprietors and admitted by them in this instance. I therefore upheld this decree, and dismiss the appeal, without issuing notice on respondent.

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THE 21ST FEBRUARY 1851.

No. 31 of 1849.

*Appeal against a decree passed by Kaze Mahomed Allum, Moonsiff of Koeley, on 6th January 1849.*

Shant Lal Sah, Plaintiff, (Appellant,)

*versus*

Mussts. Luchmunee and Shelo Chun Koer, the widows of Jummyet Lal, deceased, and Soonder Lal, the adopted son of the deceased, 1st party, and Dildar Alfy Khan Iteatun, Defendants, Respondents, and Ram Ruksh Misser, a third party, Respondent.

THIS suit was instituted on 5th October 1847, for possession and mutation of registry as proprietor and mokurureedar of 1 anna, 6 gundahs, 2 cowree, 1 krant, in a third share on 12 annas of mouza Hondrahee. Suit valued at rupees 11-8, three times the rent-roll of the share claimed.

The plaint is that this estate was the perpetual mokururee holding of Zeenoolabdeen Khan, who made a grant of it to Meethun Lal; that Methun Lal died leaving three sons, who, each, inherited a 5 annas, 6 gundahs, 2 cowrees, 1 krant share, that Jummyet Lal, one of these sons, sold 4 annas in his share to the plaintiff who got possession accordingly in 1836; that, after this, Jummyet Lal made a conditional sale of the balance of his share to the plaintiff, and this sale became absolute at the end of the year 1837; that this action is for possession in virtue of the subsequent deed of sale, and the plaintiff protects his action by making Dildar Alee Khan, the heir of the original mokurureedar, a defendant in the suit.

The defendants, Mussts. Shelochun Koer and Soonder Lal, in reply, plead that the latter sale to the plaintiff, on the part of Jummyet Lal, never took place; that 1 anna was sold to Luchmee Narain, and 6 gundahs, 2 cowrees, 2 krants, to Nursing Sohail, prior to the date of the plaintiff's alleged deed of sale; that Soonder Lal is not the adopted son of Jummyet Lal, nor is Dildar Alee Khan the only surviving heir of Zeenoolabdeen.

The above pleas are supported in the reply of the defendant, Dildar Alee Khan.

Rambuksh Misser petitions as a third party that Jummyet Lal, after the sale of 4 annas of his share to the plaintiff, sold 1 anna to Luchmee Narain from whom it has descended by purchase to him, and he has possession, and that the balance of 6 gundahs, 2 cowrees, 1 krant is only claimable by the plaintiff.

Nursing Sohail also petitions that he is the purchaser of the 6 gundahs, 2 cowrees, 1 krant from Jummyet Lal. Maharaj Roodur Singh also petitions that he is the proprietor of this estate, and the seller had only a mokururee title in it.

The moonsiff decrees to the plaintiff 6 gundahs, 2 cowrees, 1 krant of the claim, being of opinion that the deed of sale of the 1 anna executed in favor of Luchmee Narain is established on evidence.

In appeal, the plaintiff urges that it was not just in the moonsiff to exempt this 1 anna from his claim as the sale to Luchmee Narain wholly of no consideration; that if the moonsiff had sent for the buhee of the kazee, he would have found that this deed of sale is not on record.

The point to be decided in appeal is whether or no the present investigation of the moonsiff is complete, and the right issue justly determined.

### JUDGMENT.

This action was brought against Musst. Luchmune, Soonder Lal and Dildar Allee Khan, and yet the suit is defended by Shelochun Koer, and not by musst. Luchmune, and there is no supplementary petition to make Shelochun defendant; and the plaintiff's jowab-ul-jowab is in reply to Musst. Luchmune, who has not put in a defence, and Rambuksh Misser, a third party in the suit. In consequence of these irregularities, I am obliged to quash these proceedings, and direct a trial *de novo*, and the moonsiff is required to explain his proceedings in full in this case. The decree is, therefore, reversed, and the usual order passed for a refund of stamp value to the appellant.

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THE 21ST FEBRUARY 1851.

No. 30 of 1849.

*Appeal against a decree passed by Pundit Dataram, Moonsiff of Teigrah, on 2nd January 1849,*

Hurree Hur Singh and three others, Plaintiffs, (Appellants,)

*versus*

Hurdeal Rai, cultivator, and Durgopal Singh and four others, auction purchasers of mouza Ukbarpore,  
(Defendants,) Respondents.

THIS suit was instituted on 12th August 1848, to recover the sum of 40 rupees, 4 annas,  $\frac{1}{2}$  pie, balances of rent on 16 beegahs, 11 biswas of lands for 1254 Fusly, and to reverse a decree of the collector of Monghyr, dated 30th September 1847.

The plaint is that the plaintiffs hold a farm from the Government of 324 beegahs, 12 biswas, 10 dhoors of alluvial lands, which have accreted from the Ganges to their village of Wooleepore; that the defendant, Hurdeal Rai, cultivated 16 beegahs, 11 biswas, on the farm; that the plaintiff brought a summary action for the rent for 1254, against the defendant, before the collector of Monghyr; that the

suit was dismissed on the plea urged by the defendant, and supported by the petition of the other defendants, who appeared as a third party in the suit; that the land for which rent was claimed belonged to the defendants' village of Ukbarpore.

The defendants, Durgopal Singh and Jhummun Singh, the proprietors of Ukbarpore, in reply, plead that the land for which this rent is claimed has accreted to their village, and that it is situated on the north side of the Ganges; whereas the plaintiffs' village of Wooleepore is situated on the south side of the river.

The defendants, Hurdeal, and one of the other purchasers of Ukbarpore, do not defend the suit.

The moonsiff dismisses the claim, and considers that this suit for rents cannot be maintained without the right to possession being first established, since it appears from the proceeding of the collector, that in the summary suit, Gonesh Loll, the putwarry of the plaintiffs, deposed that this land was in dispute between the proprietors of Wooleepore and Ukbarpore, and that no rents were realized in 1253 Fusly, and that the names of the cultivators who were sued for rents did not appear in the kusrah of Wooleepore but in that of Ukbarpore; that in the present suit, the plaintiffs have named another person as their putwarry, and that it is not probable that the plaintiffs would have cultivated their lands by the assamees of another village, unless under a written agreement.

In appeal, the plaintiffs urge that the moonsiff ought, before decreeing the case, to have deputed an ameen to inquire on what side of the Ganges these lands are really situated.

#### JUDGMENT.

The appellants' plaint affords evidence that they are not in possession of the lands for which they now claim the rents, and the moonsiff is, therefore, right in dismissing their claim, and I quite agree with him in his several reasons for having done so. The decree is upheld, and appeal dismissed, without issuing notices on the respondents.

THE 22ND FEBRUARY 1851.

No. 32 of 1849.

*Appeal against a decree passed by Pundit Dataram, Moonsiff of Teigrah, on 4th January 1849.*

Sheikh Khadim Alee and Musst. Woozeerun, (Defendants,) Appellants,

*versus*

Sheikh Ooman, Sheikh Besharet and Sheikh Soonoo, (Plaintiffs,) Respondents.

THIS suit was instituted on the 9th September 1848, to reverse a summary decision of the assistant collector of Monghyr, for

41 rupees, 13 annas, the balance of rents for the 12 anna kist of 1255 Fusly, in mouza Nurainpore.

The plaint is that the defendants, as farmers of the villages of Nurainpore and Futehpore Telae, instituted a summary suit against the plaintiffs to recover rents from them as cultivators on 28 beegahs, 10 cottahs, of the farm; that the summary suit was decreed in favor of the defendants, and this action is brought to reverse that decree; that the plaintiffs had paid all the rents due from them to Sheikh Furzund Alee, and other proprietors, and for which they held receipts. The defendants, in reply, plead that the award in their favor by the collector's assistant is correct; that they issued proclamations under Regulation V. of 1812, to warn the cultivators in their farm against cultivating without a pottah from them; that the defendants did so, and were made liable by the collector for rents accordingly, at the rate of 3 rupees, 10 annas per beegah. A third party petition that the estate belongs to them and another sharer.

The moonsiff amends the decree of the assistant collector, and holds the defendants liable for 27 beegahs, 10 cottahs, at the rate of 1 rupee, 8 annas per beegah.

In appeal, the defendants urge their former pleas, and add that the moonsiff had no power to amend the summary decree.

The moonsiff has omitted to call for and file the proceedings held in the summary inquiry by the collector. Is this irregularity sufficient to vitiate the decree passed by the lower court?

#### JUDGMENT.

I reverse this decree, and direct a re-trial, as the moonsiff has not acted up to the provisions of Clause 1, Section 31, Regulation VII. of 1822, and on re-trying the case, the moonsiff will recollect that the court has no power to *amend* a summary decree as respects the amount decreed. The award must be for the whole amount decreed or a reversal *in toto*. The usual order is passed for a refund of stamp value.

#### No. 33.

The same plaintiffs pursue the same defendants to reverse a summary award for village rent liabilities on cultivation in another village on the same ground as in the former case No. 32. The same moonsiff decrees as in the former suit, and on the same date. The appeal here is similar, and a similar decretal order is passed by this court as in the foregoing case.

THE 24TH FEBRUARY 1851.

Nos. 35, 36, and 37 of 1849.

*Appeal against a decree passed by Baboo Bishen Lal, Moonsiff of Dulsing Serai, on 6th January 1849.*

No. 35, Musst. Beebee Ruheemun, third party, Appellant,  
 „ 36, Sheik Utuhur Hosein and others, third party, Appellants,  
 „ 37, Khadoo Muhtoe, (Defendant,) Appellant, in the suit of  
 Gondhur Singh, (Plaintiff,) Respondent,

• *versus*

Khadoo Muhtoe, Defendant.

THIS suit was instituted on the 30th January 1847, to recover the sum of 6 rupees, 9 annas and  $\frac{1}{2}$  pie, as arrears of rent for the 12 annas kist of 1254 Fusly, for 5 beegahs, 18 biswas of cultivation in mouza Mokoondpore.

The plaint is that this village is held in two separate shares, and that in the 7 annas share, in 1254 Fusly, the plaintiff was proprietor of 1 anna, 7 gundahs, 1 cowree, 1 krant, 5 reet, by right of purchase from Musst. Tujhun, Sheik Subhun Buksh and others, under two deeds of sale, dated 22nd Jyte 1253 and 18th Kartick 1254 Fusly, and farmer in the same puttee to the extent of 1 anna, 2 cowrees, 2 krants, 5 reet, as their shares leased to him by Musst. Moshehun and Sheik Fusahet Alee; that the plaintiff gave due notice to the cultivators not to cultivate without his pottah; that the defendant did so to the extent for which these balances are claimed.

The defendant, in reply, pleads that of the period for which this rent is claimed, he cultivated under Musst. Ruheemun, who held the 7 anna puttee of Mokoondpore in farm, and that he holds her receipt for the same; that the parties from whom the plaintiffs allege to occupy the estate had no transferrable right or interest on it; that Musst. Tajun and Moshehun's share was farmed to Ruheemun and Sheik Fusahet Ally, and Sheik Subhun Buksh and others have no share at all in the village.

Musst. Ruheemun, as a third party, objects that she held a farm of this 7 annas puttee in 1254, under a lease from the proprietors of Mokoondpore, dated 22nd July 1845. This settlement is confirmed by the petitions of Sheik Uthur Hosein and Beebee Wozeeroonissa.

Sheik Fusahet Alee and others petition that they leased their shares to the plaintiff and not to Musst. Ruheemun.

The moonsiff decrees for the plaintiff, as he considers that there is no proof of the proprietary right of Uthur Hosein, from whom Musst. Ruheemun declares to hold this farm, and that the purchase and lease and possession of the plaintiff is proved, as well as the right of the parties who sold and leased to him.

Musst. Ruheemun, a third party, in appeal, urges her former pleas. Sheik Uthur Hosein and Beebee Wozeeronissa, a third party, urge, in appeal, that their proprietary rights in the 7 anna puttee is established by a decree of court, dated 14th February 1821, ruling to them 5½ annas in this estate, and the possession of their farmer, Must. Ruheemun, is fully proved.

Khadoo Mahtoe, the defendant, in his appeal, urges that he has paid his rents to Must. Ruheemun, and it is unjust to hold him again liable for the same.

The point to be decided in appeal is simply the possession or otherwise of the plaintiff.

#### JUDGMENT.

This is a claim for rents, and the defendant declares to have paid Must. Ruheemun, who acknowledges her receipt. The moonsiff has decided on the proprietary rights which are disputed between plaintiff and the third parties to the suit. I therefore reverse this decree, and return the case for re-investigation, and direct the moonsiff to confine a minute inquiry to the point of possession between the plaintiff and Must. Ruheemun, and to decide the case accordingly. The usual order is passed for a refund of stamp value to each of the appellants.

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THE 24TH FEBRUARY 1851.

Nos. 38 and 39 of 1849.

*Appeal against a decree passed by Baboo Bishen Lal, Moonsiff of Dulsing Serai, on 6th January 1849.*

No. 38, Bustee Rawoot, (Defendant,) Appellant,

„ 39, Uthur Hosein, third party, Appellant,

In the suit of Gundhur Singh, (Plaintiff,) Respondent,

*versus*

Bustee Rawoot, (Defendant.)

THIS suit is instituted by the same party as in the former suit No. 37, but against a different cultivator, and is analogous in all respects, and a similar decree is passed as in the foregoing appeal cases Nos. 35, 36 and 37.

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THE 27TH FEBRUARY 1851.

No. 3 of 1849.

*Appeal against a decree passed by Sheik Darasut Alee, late Sudder Ameen, on 16th January 1849.*

Mr. M. Baptiste, (Defendant,) Appellant,

In the suit of Jumuck Chowdree himself, and guardian of Nuthoo Chowdree and two others, minor sons of Kunye Chowdree, deceased, Moulvee Ashruff Alee, and Moulvee Shere Alee, father and guardian of Nuzal Hosein, (Plaintiffs,) Respondents,

*versus*

Mrs. Baptiste and Mr. M. Baptiste, (Defendants.)

THIS suit was instituted on 19th May 1848, to recover the sum of 599 rupees, 3 annas, 6 pie, being the amount principal and interest due on a bond, dated 22nd September 1845.

The plaint is that the defendants took a loan of 454 rupees from Syud Nuzal Hosein and Kunye Chowdree, two of the plaintiffs, to enable them to pay up the balances of Government revenue due from them as sharers in the village of Mussah; that they executed this bond in favor of the lenders, and Moulvee Ashruff Alee, who are co-sharers in Mussah; that Ashruff Alee is no party to the loan; but as his name is in the bond, he is made joint plaintiff in the present suit.

Mr. M. Baptiste, defendant, in reply, denies the validity of the bond, and pleads that Nuzal Hosein is in his minority; that the plaint does not specify which of the two defendants accepted the cash on account of the bond or whether the bond was given in liquidation of Government balances; that Mr. Baptiste senior is dead, and although he was father of Mr. M. Baptiste, yet he had nothing to do with the village of Mussah; that father and son carried on business separately; that Mr. Baptiste senior was too ill at the date of the bond to have executed it; that if Ashruff Alee was no party to the loan, why does his name appear in the bond? that neither the father nor son ever borrowed a fraction from the plaintiff; that during the occupancy of the defendant in Mussah, he paid up the Government revenue due from him; that Mr. Baptiste senior was only able to write his name in French; that the plaintiffs have instituted a suit against the defendant before the principal sudder ameen's court, which has given rise to this action.

After this reply, two supplementary petitions are accepted by the sudder ameen, one admitting Nuzal Hosein to be a minor, and praying to make Shere Alee the father plaintiff, from whom the loan had been taken, and the other praying to place Mr. M. Baptiste in the place of his father, deceased.

The sudder ameen considers that the validity of the bond is fully established by the evidence adduced to prove it; that it is also proved that the defendant was in balance of Government revenue to the amount borrowed. A decree is, therefore, passed in favor of the



plaintiffs with the *proviso* that the ~~one~~ anna share of the defendant in mouza Mussah is to be sold in satisfaction of the decree passed.

In appeal, Mr. Manuel Baptiste urges that the suit is marked by irregularities which entirely vitiate the claim; that the evidence of the subscribing witnesses to the bond is discrepant, and that to specify the property to be sold in satisfaction of a decree had on a bond debt, is unjust.

Notices were served on the respondents from this court on 16th December 1850. Moulvee Ashruff Alee does not appear. The other respondents, in reply, plead in support of the view taken of the case by the sudder ameen.

The point to be decided in appeal is the validity or otherwise of this bond.

#### JUDGMENT.

This deed is not only unsupported by evidence, but is, in my opinion, a palpable forgery. The evidence of the subscribing witnesses is discrepant on several material points: the name of the writer is not inserted on the bond; Chowkoree Lol and Tufusul Hosein depose that Doorgah Pershad wrote the deed; whereas Doorgah Pershad declares he did not write it, and that he does not know who did. There is also a discrepancy as to who took the cash to Mr. Baptiste; neither is it proved that Mr. M. Baptiste was in balances for Mussah as alleged by the respondents. The dakhillas of the collectory do not shew that the balances were paid in on Mr. Baptiste's account. The following words are recorded in the same handwriting on the bond, "cash borrowed and received from Moulvee Ushruff Alee and from said Noozollet Hosein and Kunny Chowdree, the sum of four hundred and fifty-four rupees (454) Company's rupees, payable after four months, from this day's date, the 22nd of September 1845, at the rate of interest per each hundred one rupee per month. Justus Baptiste. Justus Manuel Baptiste signed for my son J. M. Baptiste, Mozuferpore, Tirhoot." Now Mr. Anderson, and Mr. Morgan, witnesses to the defence, depose that this is not the signature of Mr. Baptiste senior; and they identify his signature on a document produced by the appellant. Moreover, these witnesses depose that they have been intimately acquainted with 'old Mr. Baptiste, the former for twenty years, and *that he could neither write nor read English*, and that his knowledge of writing only extended to writing his name. Yet in the face of this, the sudder ameen has not only passed a decree in favor of the respondents, but he has ruled that the share of the appellant in Mussah is to be sold in satisfaction, a rule not asked for by the respondents nor justified by law, equity or usage, but showing plainly that the object of this false suit was to oust Mr. M. Baptiste from his share in Mussah, under the countenance of the court! I therefore reverse his decree, and decree the appeal, with costs, and another proceeding will be held to make over the respondents' witnesses to the bond to the magistrate, under Act I. of 1848.

## ZILLAH TWENTY-FOUR PERGUNNAHS.

PRESENT: H. T. RAIKES, Esq., JUDGE.

THE 4TH. FEBRUARY 1851.

No. 50 of 1850.

*Original Suit.*

Sitarah Begum *alias* Bebee Feristun, Plaintiff,

*versus*

Monee Jan Begum, Moulyee Abdool Ahud and W. H. Sterndale,  
Defendants.

Sorah Bebee, Alumonissa *alias* Belue William, Claimants.

Value of claim rupees 14,737-14-13-1-1.

THE plaintiff states that she executed a deed of hibe-bil-ewuz in favor of her niece the defendant, Monee Jan Begum, dated the 19th of August 1847, giving to her certain real and personal property on consideration of receiving the sum of 1000 Company's rupees as soon as the registry of the deed should be completed; that the deed was registered on the 28th of August 1847, but the defendant Monee Jan had failed to pay her the consideration agreed upon, and having furtively possessed herself of the title deeds of the property named in the deed, she had leased part of it, consisting of dwelling house, to Mr. Sterndale, one of the defendants, and made over the whole by another deed of hibe-bil-ewuz to Abdool Ahud, her son-in-law, who was also made a defendant in this suit. She, therefore, sued to cancel the deed and recover the property taken from her.

Monee Jan Begum first pleaded that the property had been generally undervalued, and particularised the estimated value of the dwelling house which she averred was worth 10,000 rupees, instead of 6000, the value put upon it by plaintiff. She also pleads that a deed of hibe-bil-ewuz, when once executed, has all the force and validity of a contract of sale, and cannot be revoked by either of the contracting parties, or upon the plea of non-receipt of the consideration. She, however, avers that she has paid the amount stipulated, and that the property was delivered to her by plaintiff.

Mr. Sterndale stated that he was only a tenant of the house in dispute and not interested in the suit, and prayed the court to receive his rent and provide for his expenses in the suit.

Moulvee Abdool Ahud stated that the real property involved in this suit had been made over to him by a deed of hibe-bil-ewuz, executed in his favor by his mother-in-law, Monee Jan.

Plaintiff, in her replication, avers the full and proper valuation of her suit, and adds that by a precedent of the Sudder Court of the 22nd December 1841, the deed of hibe-bil-ewuz must be regarded as invalid, as the value of the property disposed of, is not defined in the deed.

The plea raised by defendant in bar of this suit was, subsequently, abandoned after hearing the evidence of two witnesses summoned by plaintiff to prove the correctness of her valuation of suit.

The next point taken up by the court was the legal construction to be put upon the terms of the deed of hibe-bil-ewuz, as to whether the contract therein recited was dependant upon the payment of the consideration agreed upon, or, as averred by the defendant Monee Jan, was binding on both parties whether such consideration was paid or not.

The deed of hibe-bil-ewuz was filed by the defendant, and as its integrity is admitted by both parties, it is only necessary to refer to its terms. The deed commences by reciting that it is a deed of hibe-bil-ewuz executed by plaintiff in favor of her niece, the defendant Monee Jan, and that she has given to her certain real and personal property detailed at length for the consideration of Company's rupees 1000; that the amount stipulated has been received, and the property mentioned given over.

The deed was registered on the ninth day after its execution.

The plaintiff's vakeel argues that although the tenor of the deed goes to show that the consideration had been paid, yet it must be considered that all documents of this nature are so worded, while it is the invariable custom to pay the money afterwards, and that, in this case, it was verbally agreed that the payment of the money should take place after the registry; and that failure on the part of the defendant named to perform this condition had invalidated the deed, and, on this ground, plaintiff sued to cancel it.

The question to be determined by this court is whether payment of the consideration money is essential to the validity of the deed, and that, if such payment be not proved, is plaintiff at liberty to recede from the contract or not? For the following reasons I am of opinion that, under any circumstances, the deed of hibe-bil-ewuz cannot be disturbed, and that it is binding on both the contracting parties.

In the first place, there can be no doubt that the deed is a deed of hibe-bil-ewuz, and must be construed as such according to Mahomedan Law. At page 221 of Macnaghten's Mahomedan Law, hibe-bil-ewuz is thus described. "It consists in a person saying to another that he has given such a thing for such a thing as for this cloth or for this slave, or for a thousand dirms; and this

description of gift resembles a sale in both stages agreeably to the universally received opinion; in which case the seizing of the donee is not an essential condition." Now this being the real nature of the transaction, namely, a contract of sale, and the document itself showing the intention of the contracting parties to abide by it as a contract made and *completed*, I am of opinion that neither party is at liberty to recede from it, and non-performance of the conditions contained in it, though such might give rise to a cause of action on that score for specific performance, is not sufficient ground for maintaining an action to dissolve the contract, or to recover property held under its conditions. I therefore dismiss plaintiff's claim, with costs, save with respect to the costs of summoning the witnesses who gave evidence on her part regarding the valuation of the suit, as that plea was vexatiously advanced by the defendant Monee Jan. The amount of rent deposited by Mr. Sterndale to be paid to Monee Jan on her filing a receipt in his favor. The expenses of Mr. Sterndale and the other defendants to be borne by plaintiff. The two claimants have come forward unnecessarily. No order is required regarding them.

THE 5TH FEBRUARY 1851.

No. 3 of 1850.

*Original Suit.*

Ramchunder Paul Chowdree and another, Plaintiffs,

*versus*

Punchoo Mundul, Zameer Mundul, Domun Mundul, and the heirs of Kubeer Mundul, Defendants.

SUIT laid at rupees 11,923-11-13, to eject from tenure and for balance of rent.

The plaintiffs state that the father of Ramchunder Paul Chowdree, in 1221 B. S., granted a pottah to Oolus Mundul, the father of the defendants, Punchoo and Zameer, for 615 *beegahs*, 14 *cottahs* of land, at a jumma of rupees 547-1, for a period of nine years, as a *kuddeefnee* ryot; that Oolus continued to occupy the land as ryot during his lifetime after the lease had expired, and died in 1247 B. S.; that after his death, notice was served on his sons, the two defendants abovementioned, to come forward and engage for the lands, but they failed to do so, and kept possession, only paying yearly some part of the rent. The plaintiffs, therefore, sue to eject them from the holding as having no lease or engagement, and for balance of rent left unpaid during the last nine years, calculating the arrears at the enhanced demand of 1000 rupees, 8 annas, 4 gundas per annum.

The defendants replied that the terms of the pottah granted to their father, stipulated for its renewal after the expiry of the nine

years, at the same rate as then agreed upon, and that plaintiff wished to enhance the rent; that no notice had ever been served upon them, and that as kudeemee ryots, they could not be ousted from their holding, as they had regularly paid their rents and held the receipts of plaintiff's servants.

The points determined for trial were whether any notice had been served upon defendants, and, if so, whether an enhanced rent was demandable from them or not.

What amount defendants were in balance and could they be legally ejected from the tenure under which they asserted themselves to have held the lands?

A copy of the notice alleged by plaintiff to have been served on defendant in 1248 B. S., was filed by him, and proof of the service tendered; but, on perusing the copy, this court observed that it was not a notice drawn up in conformity with Section 9, Regulation V. of 1812, detailing the specific jumma demanded and the right of the landlord to enhance, but merely a summons to the defendants as the heirs of Oolus Mundul to appear at plaintiff's cutcherry within fifteen days, and engage for the lands held by their father. The service or not of such a notice was deemed immaterial, and the evidence offered on that point unnecessary. The only other proof adduced on the part of the plaintiff was the authentication of the jumma-wasil-bakee papers, in which the payments of rent made by defendants were entered and the balance recorded, and evidence of the rates of the land occupied by the defendants.

The defendants put in the dakhilas and adduced witnesses to prove the receipt of them.

Regarding these accounts, it is only necessary to say that taking the demand at defendants' rate, there is only a difference of 100 rupees between the amount entered in plaintiffs' accounts as received from defendants, and that in the dakhillas produced by them, the latter being the amount defendant consider themselves bound to pay and no more. It is impossible to say on which side this sum has been miscredited during so many years, and the parties cannot point out any particular item in the accounts as disputed between them. It is, therefore, impossible to decide that it is balance unpaid, and it is a matter of very little consequence in the general merits of the case. The chief points to be decided are whether plaintiff is entitled to the arrears at the rates demanded, and whether he is at liberty to oust defendants from their present occupancy of his land.

It appears to me that plaintiff's claim is somewhat inconsistent. He sues to eject the defendants because without being his tenants they continue to occupy his lands as ryots, and at the same time sues them for arrears of rent. His own statement and his own accounts show that during this time he has treated them as his ryots in both demanding and receiving from them certain sums of rent. The real question in dispute, and hitherto the only one

apparently, between them, had been for an enhanced rent; but even this is a matter of conjecture, for there is no proof that plaintiff has ever taken legal measures to make defendants aware of such a demand. I am, therefore, of opinion, that it would not be equitable to disturb defendants' possession under the present action, as plaintiff, by receiving his rent, must be considered during those years to have virtually confirmed defendants in their father's right of occupancy, and also that, until he has proceeded according to law to enhance the rent of their holding, he is not entitled to a higher rent than has been received for it in former years, which rent the defendants appear to have regularly discharged. I therefore dismiss the plaintiff's claim, and direct that he pay the costs of defendants in this suit.

THE 14TH FEBRUARY 1851.

Case No. 176 of 1850.

*Appeal from a decision of Ramnarain Sandyal, Moonsiff of Nyehatty, passed on 16th May 1850.*

Sumbhoo Chunder Roy, (Defendant,) Appellant,

*versus*

Raja Radhakanth Deb, (Plaintiff,) Respondent.

PLAINTIFF sued for rupees 86-9-9-1, being principal and interest on arrears of rent due from the defendant who took a year's lease of a bazar in Aghrun 1249, at a jumma of 351 rupees.

Defendant admitted having taken the farm, and that the engagement was drawn up in his name only; but that a person named Ramchand Shah had been associated with him and shared the profits; that the arrears claimed (which independent of interest amounted to 51 rupees) had been liquidated by a payment of 22 rupees to plaintiff's second son, and by a set-off allowed him of 29 rupees on account of fish sold, the property of Ramchand Shah, for which two payments a dakhilla was granted to defendant by the naib, in Aghrun 1252 B. S.

The moonsiff states in his decision that plaintiff put in accounts which showed the sums paid by defendant, and defendant failed to prove that Ramchand Shah had been associated with him in the farm; that he brought forward two witnesses to prove the dakhilla whose evidence was not trustworthy, and the moonsiff placed no reliance on the defendant's statement of payment, as the naib was brought forward and repudiated the dakhilla, while Ramchand Shah, the party whose fish was sold, and the proceeds said by defendant to have been credited to his account, was not produced at all. The moonsiff, therefore, decreed to plaintiff the amount claimed.

The defendant has appealed against the decision. He takes exception to the accounts filed by the moonsiff, and says they are not really originals, but have been prepared as evidence in support of the present claim, and avers that his witnesses proved his receipt of the disputed dakhila giving him credit for the sums of 22 rupees paid to plaintiff's second son, and of 29 rupees on account of Ramchand's fish.

As defendant averred in the lower court that he had liquidated the balance claimed by the plaintiff, by payments which were subsequently carried to his credit, and for which he received a final and distinct discharge, defendant was bound either to prove the one fact or the other, and plaintiff's accounts were not needed for this purpose. The only proof tendered by defendant is the testimony of two men who were casually present at the zemindar's cutcherry (as they say) when defendant called for this dakhilla. These men, however, not only depose to the delivery of the dakhilla, but enter into a long account and explanation of Ramchand Shah's fish having been sold, and the proceeds allowed as a set-off on the part of defendant. I have no doubt the witnesses have been tutored, and consider their evidence quite unworthy of credit. They are not in a condition of life to have become acquainted with the matters they speak of through their own knowledge of the parties. I therefore see no reason to interfere with the moonsiff's decision, and dismiss this appeal, without summoning the respondent.

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THE 20TH FEBRUARY 1851.

Case No. 6 of 1850.

*Original Suit.*

Govind Chunder Dhur, Plaintiff,

*versus*

Wafeeah Bannoo, Fatema Khanum and Fatema Bebee,  
Defendants.

SUIT for rupees 7118-5-6-2-2, principal and interest of bond.

Plaintiff states that he was requested by some members of the family of the late Moonshee Bualee to lend the defendants (the mother, widow and sister of the deceased) the sum of 5000 rupees on pledge of Company's paper, to enable them to perform the funeral ceremonies of their relative in a becoming manner; that he accordingly took the money to their family residence where a bond was executed in his favor for the amount stated, on the 21st of Maugh 1253 B. S., by which the three defendants bound themselves to repay the loan in four months, with interest, and placed in plaintiff's hands, as security, a Government promissory note for 10,000 rupees, the property of the late Moonshee Bualee; that as the loan had never been repaid, this action was brought for its recovery.

Waffeeah Bannoo was the only defendant who filed a reply. She states that she is the mother of the late Moonshee Bualee, and admits the execution of the bond and pledge of the Company's paper, but avers that she was at the time in deep affliction for the death of her son, and quite incapable of transacting business of any kind; that the money was borrowed by the other defendants in conjunction with her son-in-law and other relatives, but without her previous knowledge or consent, and that taking advantage of her condition, her seal was affixed to the bond, through their instrumentality, without her permission or direction.

That, moreover, the plaintiff's claim cannot be adjudicated on by the court under the prohibition contained in Section 9, Regulation XV. of 1793, as plaintiff deducted from the loan of 5000 rupees the sum of 250 as dhurat or discount.

The averments contained in this reply were denied by the plaintiff.

The issues declared for trial were whether the bond was executed as stated by defendant, without her knowledge and consent, and whether the sum of 250 rupees had been deducted from the principal, thereby rendering necessary dismissal of the claim under Section 9, Regulation XV. of 1793.

#### JUDGMENT.

It is stated by the witnesses on both sides, that the money was avowedly borrowed for the purpose of celebrating the futiha of Moonshee Bualee with becoming respect; and that the usual ceremonies were so performed with the knowledge of his mother, the defendant, who was also well aware that the money required had been raised through the assistance of the plaintiff, though at the time of executing this bond, defendant's witnesses add, that she was in deep grief and incapable of attending to any thing.

It is difficult to suppose that she could have been altogether ignorant of this matter even at the very time of its occurrence, and it is impossible to consider her as other than a consenting party in all that subsequently took place, and to such an extent as to deprive her of any equitable defence on the plea now set up by her. Had she committed herself or been committed through the acts of others to any deed or instrument seriously affecting any rights newly accruing to her at her son's death, for the settlement of which time should have been given her for thought and advice, it would have been fair to raise the defence of incapacity from ignorance or grief, to free herself from any such obligations; but, in the present case, such a plea is altogether misplaced, as the more profound and sincere her grief for her son's death is represented to have been, the greater would be her desire to show all natural regard and anxiety for his spiritual welfare, and the less inclined (one would suppose) to have cavilled or demurred at such arrangements as the



members of the family deemed necessary for raising the requisite funds.

I, therefore, cannot but consider that the application of this money to a purpose which had her undoubted approbation, and in which she must have felt a deep personal interest, is sufficient to warrant a belief that defendant was altogether and completely a consenting party to the loan, and, therefore, a sharer in the joint liabilities incurred by the other defendants who have not disputed the demand.

The next point to be considered is whether or not any deduction was made from the loan so as to render a dismissal of this claim imperative according to the provisions of Section 9, Regulation XV. of 1793.

Seven witnesses were examined by me in open court, four of whom were subscribing witnesses of the bond, and of these, two denied that any deduction was made, and two declared that although eight notes for 50 rupees each were produced and their amounts recited in the bond, the plaintiff kept back five of them amounting to 250 rupees as discount or interest in advance for the four months. These two witnesses are the brother and mooktear of Waffeeah Bannoo, and were supported by two other witnesses, the tehsildar and peadah of the same defendant, who, however, evinced such eagerness to speak on this particular point, that it was evident they had been tutored for the occasion. On the ground of interest and connection I consider the evidence of these parties suspicious; whereas those on the part of plaintiff are Mahomedans, have no apparent connection with him, and one Surfooddeen is the husband of Fatema Khanum and son-in-law of Waffeeah Bannoo. On weighing, therefore, the evidence of these witnesses, I think the greatest credit is due to those who deposed in favor of the plaintiff, and that the circumstances of the case generally are in favor of his claim. I, therefore, decree to plaintiff the principal with simple interest thereon at 12 per cent., till date of decision, and interest upon such consolidated sum till payment of the same. Plaintiff will also get the costs of this suit.

THE 26TH FEBRUARY 1851.

Case No. 254 of 1850.

*Appeal from a decision of Mr. H. S. Thompson, Sudder Moonsiff,  
passed on 29th August 1850.*

Munnee Laul Chowdhree, (Plaintiff,) Appellant,

*versus*

Hurreehur Banerjee, (Defendant,) Respondent.

THE plaintiff sued for the amount of a bond for 100 rupees, with interest.

## ZILLAH BACKERGUNGE.

PRESENT : W. J. H. MONEY, Esq., JUDGE.

THE 2ND APRIL 1851.

No. 18 of 1848.

*Appeal from the decision of Moulree Mahomed Kuleem, Principal Sudder Ameen, dated 20th April 1848.*

Sredusseree, wife of Radhamohun Ghose, deceased, (Defendant,)  
Appellant,

*versus*

Ranee Golab Dabee, wife of Dulsingh Baboo, (Plaintiff,)  
Respondent.

THIS suit was instituted by the plaintiff, to recover the sum of Company's rupees 870-8-4-8 kt., principal and interest, on account of revenue for the years 1243 and 1244, due from the defendant after deducting payments on account of her tenure called Rajkishore Ghoo and Dhurmonarain Ghoo, held at an annual acknowledged jumma of Sicca rupees 222-11, situated in kismut Juguddul and Jyegurra, in the 1 anna, 17 gundahs, 1 cowree, 2 krants share of her zemindaree in pergunnah Chunderdeep.

Sredusseree denied the existence of any balance, declared the jumma to be fixed, and as Surmonissa Khatoon and Buduronissa Khatoon, and Meer Ubbee Abdoolla and Meer Ubdool Majeed, as guardian for Fuzul Kureem, minor, were in possession of half of the talook in question, their names should have been included in the plaint. Sundry receipts were also filed for the years 1243, 1244 and 1245, with the signature of the plaintiff's zemindaree servant, making an aggregate of rupees 237-8-6-8 kt., with reference to which it was observed that if there had been any balance of previous years, receipts for current revenue would not have been granted.

The plaintiff, in her replication, insisted upon the jumma being what was called "kuboollee," declared no record existed in her office of the rights of Surmonissa Khatoon, and the other persons named by the defendant, and that the balance of revenue claimed

was in accordance with the accounts prepared in her office after deducting payments.

The principal sudder ameen considered the defendant responsible for the payment of the balance as detailed in the account furnished by the plaintiff, which had been attested by witnesses, one of whom was the writer, and rejecting the objection as to the possession of Surmonissa Khatoon and others, in the half share of the talook as being unsupported by proof, and, suspecting the receipts to have been fabricated for the occasion, and not deeming the evidence adduced in their support of any weight as compared with the respectable testimony furnished by the plaintiff, he gave a decree in her favor for Company's rupees 923-13-10-8 kt., principal and interest and costs, charging the defendant with her own costs with the understanding that no proprietary rights were affected by his decision.

The appellant repeated the plea of payment according to the receipts filed, and urged that no reliance could be placed on the account filed by the respondent in consequence of its being prepared in her own office, and the witnesses to its recovery being her own servants.

The signature of Chunder Madhub, the respondent's zemindaree head servant, on the balance account in this case, is quite different from that attached to the receipts filed by the appellant, and the appellant's pleader with full opportunity allowed him has been unable to show the genuineness of the *latter* by a reference to other suits in the record office: in fact the signature on this balance account here completely tallies with the same signature on a balance account in a former suit produced from the record office at the request of the appellant's pleader as the name of Surmonissa Khatoon, and the other persons mentioned, were not shown to be recorded in the respondent's office, her suit against the appellant alone was of course quite regular: not seeing, therefore, any reason for interfering with the principal sudder ameen's decision, it is confirmed, and the appeal dismissed, with costs.

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THE 3RD APRIL 1851.

No. 60 of 1847.

*Appeal from the decision of Moulvee Mahomed Kuleem, Principal Sudder Ameen, dated 11th August 1847.*

Mudoomohun Doss, (Defendant,) Appellant;

*versus*

Syud Shurufoddceen Mahomed, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff, to recover 17 buffalos by the reversal of the unjust attachment and sale of 13 buffalos, laying his damages at rupees 500.

The plaintiff sets forth that on the 28th Phalgun 1225, the plaintiff's mother delivered into the custody of Kunnye Ghose and Futtick Chunder Ghose, 26 buffalos, who gave her a kuboolut and paid her by a chillan the value of the milk, &c., of these animals; that on the death of Futtick Ghose in the year 1250, the plaintiff's mother, discovering that there were only 17 buffalos remaining out of her 26, gave them over to the charge of Brindabun Sumadhur on the guarantee of Mudennarain Biswas; that Lukheekaunt Bhuya and others conspired and claimed 11 of these buffalos as having purchased them from Futtick Chunder Ghose, and brought a charge of theft against Mudennarain Biswas, which charge, upon enquiry, proved unfounded, and the magistrate directed the buffalos to remain in the custody of the person who then had them, and referred those, who had any claim, to the civil court; that in the mean time Mudennarain Biswas fraudulently setting up Mudennamohun Surkeil, as a claimant, and Nitanund Dutt, a gomashita, under the pretence of there being a balance of revenue due from the plaintiff's mother's ousut neemhowla, situated in a neemhowla belonging to Mudennarain Surkeil, caused the attachment and sale of fictitious purchase of 13 of the buffalos alluded to through the native commissioner; that the plaintiff's mother dying at this juncture, leaving him her heir, he has brought this action, and denies the existence of any ousut neemhowla belonging to his mother, or the issue of any notice in connection with the summary claim referred to.

Mudun Mohun Doss denied the allegation of the plaintiff entirely, and observed that as in a former investigation by the criminal authorities the plaintiff's mother appeared to have had only 2 buffalos, the claim for 17 buffalos was unfounded.

The plaintiff, in his replication, reiterated his charge against Mudunmohun Biswas.

The principal sudder ameen referred to the proceeding of the magistrate, dated the 27th June 1844, the urzee of the native commissioner, dated the 30th November 1844, and other papers and the evidence of two witnesses on the part of the plaintiff, and considered that 17 buffalos, the property of the plaintiff's mother, had been made over to Brindabun Chunder Sumadhur, on the guarantee of Mudennarain Biswas, who called himself Mudunmohun Biswas, and that this last person subsequently brought a false claim for rent against the plaintiff's mother, said to be due to Mudunmohun Surkeil, one of his own people, and caused the attachment and sale and fictitious purchase of 13 buffalos, thereby depriving the plaintiff of the same. Under these circumstances he gave a decree in favor of the plaintiff for 17 buffalos, the property of his mother to which he had succeeded as heir, and which he was to receive from Mudunmohun Biswas, Tilok Chunder Ghoo,

Tara Chand *alias* Bacharam, Kerteenarain Chung, Mudunmohun Surkeil and Nitand Dutt, releasing the other defendants, and charging Mudunmohun Biswas with his own costs.

The appellant repeats his former denial of the respondent's allegations, and urges that no proof whatever was tendered as to the buffalos having been made over to Brindabun Chunder Sumadthur on his guarantee, and as to the papers to which the principal sudder ameen alluded, it was clear from the magistrate's record that he ordered the buffalos to be made over to the charge of Mehal Chung and Sumboo Chung; that the evidence of the witnesses, who were under the contract of the respondent, was contradictory, and that the principal sudder ameen had received two supplementary plaints in this case, in contravention of Section 5, Regulation IV. of 1793, and had released Brindabun Chunder Sumadthur who was the principal defendant.

The respondent observed that Brindabun Chunder Sumadthur was the prime mover in this case, and Mudunmohun Surkeil was connected with the appellant, and the other persons were his servants.

It appears that when the buffalos were in the first instance made over to the charge of Kunnye. Ghose and Tilok Chunder Ghose, a regular memorandum in writing was executed: but beyond the evidence of two witnesses on the part of the respondent, there is no proof whatever that the buffalos were ever made over to the charge of Brindabun Chunder Sumadthur on the guarantee of the appellant. And although 13 buffalos appear to have been attacked and sold at the instance of Mudennarain Surkeil, there is no proof on record that the appellant caused that attachment and sale, nor indeed is his connection with Mudennarain Surkeil at all apparent. The appeal is, therefore, decreed, the principal sudder ameen's order reversed, and the claim of the respondent against the appellant dismissed with costs.

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THE 4TH APRIL 1851.

„ No. 20 of 1848.

*Appeal from the decision of Moultee Mahomed Kuleem, Principal Sudder Ameen, dated 29th April 1848.*

Hur Chunder Ghose, (Plaintiff,) Appellant,

*versus*

Hurmuncce Chowdrain, wife of Gourmuncce, deceased, mother and guardian of Doorganarain Rae, minor, (Defendant,) Respondent.

THIS suit was instituted by the plaintiff, to recover the sum of Company's rupees 629-5-4, principal and interest, from the defendant on account of a loan of Sicca rupees 295, contracted by her on the 11th Aughun 1241, after the death of her husband, and while

guardian of her minor son, for the purpose of paying the revenue of her 7 annas share in the 9 g. 1 c. (divided into 16 portions) zemindaree of pergunnah Suleemabad, recorded in the name of Lukheenarain Chowdree, which was to be paid on the 11th Kartick 1242, with the engagement, that the property above mentioned was not to be alienated until the amount was liquidated.

Hurmune denied the debt altogether, and observed that it was extremely improbable she would have pledged valuable property for the sake of such a trifling sum mentioned, and still more singular that the plaintiff should not have sued for payment before. The plaintiff being aware that her son's property could not be sold for her debt, had falsely made it appear as if the debt had been incurred for the purpose of paying the revenue; that the plaintiff had not stated when the debt was contracted, and his claim was shown to be unfounded from the fact of his having filed a supplementary plaint relative to her being guardian of her minor son at the time of the contraction of the loan; that 12 years had elapsed from the date of the bond, and if such an instrument from the *date* of promise of payment was to be admitted, many similar bonds could be fabricated by other persons; that Raj Comar Rae, one of the sharers with whom there was a dispute, had got up this case through the plaintiff, his servant and relation.

The plaintiff, in his replication, insisted upon his claim in accordance with the law; that the defendant was on terms of friendship and not at enmity with Raj Coomar Rae; that the loan was contracted at Rae Cattee in the house of Kumal Kishen Bose, it not being customary to mention this circumstance in the plaint, and that the defendant had filed her vakalutnamah in the case a long time after the usual notice was issued.

The principal sudder ameen observed that the loan was stated by the plaintiff to have been incurred by the defendant to pay the revenue on behalf of her adopted son, whereas at that time no child had been adopted, and as it appeared from a receipt, dated the 9th Chyite 1241, filed by the defendant that the revenue of her property had been collected by the tulseeldar appointed by the collector, there was no necessity for her incurring any debt on that account: and with reference to three of the witnesses of the plaintiff residing at a distance from the place where the loan was said to have been contracted, the improbability of their having had any interview with the defendant from the fact of their being persons of low caste the omission of the plaintiff to state in the first instance the place where the debt was incurred, and the fact of Ram Coomar Rae, a sharer of the defendant, having got up the suit through the plaintiff as established by the evidence on the part of the defendant and the suspicious appearance of the bond, the principal sudder ameen dismissed the claim, with costs.

The appellant urged that his bond had been proved; that no receipts had been produced by the respondent to show that any revenue was paid in Aughun 1241 through the surbarakar, nor was it apparent that there was any such person in the month of Aughun. The mere filing a receipt of the surbarakar for revenue paid in Chyte was no proof that revenue was paid *previously*; that two of his witnesses were persons of respectability, and a third, though he lived at another village, was in the habit of visiting Rae Cattee where the loan was incurred, and the paper on which the bond was written had been purchased by Kalee Kinkur, the general agent of the respondent.

As Mohes Chunder, the writer of the bond, and as stated by the appellant a brother of the respondent, and therefore an important witness, was not produced, the bond cannot be said to have been satisfactorily proved. I confirm, therefore, the principal sudder ameen's decision, and dismiss the appeal, with costs.

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unmolested possession of the same, and that she also purchased with her own money some lands belonging to chuck Anunt from Tri-poorra Soondaree, which she held in her own name. The defendant Doyamoyee, in March 1844, brought a claim in the magistrate's court under Act IV. of 1840, stating that of this property she was a half sharer by virtue of a deed of gift from one Soodabhee, the sister of the plaintiff, and by the assistance and collusion of Nund-kishore Ghose, who in the magistrate's court was made a defendant: the possession of one-half of the property was summarily decreed in favor of defendant, and therefore to get this decree the present suit was instituted.

The defendant Doyamoyee in the principal sudder ameen's court filed a reply, acknowledging that she is in possession of one-half of the property as a co-sharer with the plaintiff, and that she became so possessed by a hibehnamah of Soodabhee transferring her right and title to her. She asserts that the statement of the plaintiff that the property was left to her alone by her father is false, and that the lands were never in his sole possession; but that they were conferred on the plaintiff Raybuttee, and her sister Soodabhee, as a means of subsistence by their father Ram Kunnie, and his co-sharers in the estate; and that Soodabhee made over her share to her (the defendant) in return for her share of the household expenses.

The plaintiff, in reply to the above, filed a petition on the 1st of May 1846, stating that the deed, under which the defendant claims possession, is a forgery, and that Soodabhee never had any interest in the lands, the 20 beegahs, 10 of lakhiraj, and that therefore she had not the power to transfer to any one any right or title in them. In support of the pleas of the defendant certain claimants, by name Nubbokishore Ghose, Lalgovind, Ramgovind and Pearymoney Dossia, presented a petition on the 21st April 1847, to the effect that they are the rightful heirs and proprietors of the lakhiraj lands in question, as descendants of Sonatun Ghose, the original proprietor, and that the lands were made over in 1203 by them to their relations, Raybuttee and Soodabhee, for their lifetime, and that Soodabhee had no power to confer her right to another as she had only a limited and life interest in the property.

On the 20th May 1847, other claimants came forward, and stated that they (Goopee Soondaree and Brijjo Soondaree) claim inheritance from Sonatun Ghose, and that Pearymoney has no right whatever in the property as she has not inherited the property of her father-in-law Kistokaunt; and they state that Raybuttee (the plaintiff) and Soodabhee received from their father the property in dispute, and that the claim of the defendant having become possessed of the property by gift from Soodabhee, is false and untenable, as she had not the power to transfer it.

On the 28th May 1847, a petition was presented in the court by one Ramgovind Ghose, styling himself the heir of Nityanund Ghose,



the son of Bullubekaunt Ghose, one of the original sharers of the property, and he allows that the property in question was in 1203 B. S., made over temporarily to the two daughters of Ram Kunnie, Mussts. Raybuttee and Soodabhee, by the other sharers, and that they were only vested with a life interest.

The principal sudder ameen decreed possession of the land in dispute to the plaintiff; but not under the title on which she claims it, but on the deed executed in 1203 by the heirs of Sonatun Ghose, who transferred the life interest of the lands in question to the two daughters of Ram Kunnie Ghose, as a means of subsistence, and the principal sudder ameen reverses the decree under Act IV. of 1840, by which Doyamoyee got possession of half of the property.

This order was appealed to this court by the defendant, and in her petition of appeal Doyamoyee lays great stress on the deed of transfer of half of the property by Soodabhee to her on which the Act IV. case was decided, and says that the proofs of the possession by Raybuttee of the lands, which are mentioned by the principal sudder ameen also contain evidence that Soodabhee was a sharer with the respondent, and that Soodabhee from the first had an interest in the property, and the appellant urges her right to the same interest; that Soodabhee had in consequence of the deed of gift executed by her previous to her death in favor of the appellant.

The appellant, in my opinion, states nothing that can affect the decision of the lower court. The deed of gift or transfer of her share of the property by Soodabhee to the appellant is declared invalid and a fabricated deed by the principal sudder ameen, and I am of the same opinion. The deed is not registered, and the witnesses to the execution of it are persons connected with Doyamoyee. Moreover, I doubt the power of Soodabhee to transfer her right to the property even during her lifetime. The deed is dated 9th Phalgun 1221, and Soodabhee, as allowed by both parties, did not die before 1234 or 1235, and she always lived with her sister Raybuttee, and was living with her at the time of her death, and I consider it most improbable that she could, or would have made any transfer of her interest in the property unknown to her sister, who states that the first time the deed saw the light was when it was produced in the Act IV. case in Jy 1251, a period of 30 years after the date of execution. The possession by Raybuttee of the property is clearly proved by the kubooleuts of the ryots, and by the local investigation of the ameen who was deputed by the principal sudder ameen, and previous to the Act IV. case there is no evidence whatever to prove any interest in the property by Doyamoyee, and though she obtained possession of a part of the property by that case, it is evident from the papers of the said case that Raybuttee was not a party to the suit, and that she knew nothing regarding the institution or existence of it until Doyamoyee had, through collusion with the nominal defendant in the case, got a decree in her

favor. The appeal is therefore dismissed, and the order of the lower court upheld, giving to Raybuttee a life interest in the property, with costs of both courts.

THE 28TH APRIL 1851.

Case No. 181 of 1850.

*Regular Appeal from a decision of Mirza Mahomed Askuree Khan  
Fikrut, late Moonsiff of Kanderah, dated 28th June 1850.*

Musst Doorga Dibbea, (Plaintiff,) Appellant,

*versus*

Ramessur Bhuttacharje, (Defendant,) Respondent.

THIS suit was instituted on the 23rd August 1849, to recover from the defendant the sum of Company's rupees 30, as maintenance or subsistence money for the plaintiff, who is daughter-in-law of the defendant, and for her infant child, and to establish 2 rupees as the monthly allowance.

The plaint sets forth that the plaintiff is the widow of one Ramgopal Bhuttacharje, who died in 1255 B. S., and who was the eldest son of the defendant; and that up to the date of death of Ramgopal she lived in comfort with her husband and father-in-law on the produce of some *brumutter* lands of which they were co-sharers; but that shortly after the death of her husband the defendant turned her out of doors on the 1st Jyete 1256 B. S. with her infant child, and declined giving them any support, and that consequently she is compelled to bring this case, suing the defendant for 2 rupees per mensem from 1st Jyete to the end of Srabun 1256, and to establish a monthly allowance of 2 rupees.

The defendant admits that the plaintiff is his daughter-in-law, the widow of his son Ramgopal, and says that he is willing to support her if she will come and live at his house and share his humble fare. He says that his income is very small and the profits from the small quantity of lands he holds very limited, and that his means have been greatly reduced in consequence of the expenses attendant on the religious ceremonies performed at the death of his two sons, Ramgopal and Ram Ruttun, and that he is quite unable to pay at so high a rate as that claimed by the plaintiff.

The moonsiff dismissed the claim of the plaintiff, and says that from the evidence of the witnesses it would appear that the plaint is groundless, and that the plaintiff in consequence of some quarrel left the house of her father-in-law, and went to reside with her own father, and that he considers that the plaintiff has no right to claim the means of support from her father-in-law.

In this view of the case I cannot agree, and on the order being appealed by the plaintiff, and the plaintiff, in her petition of appeal, stating that if she was not supported by her father-in-law, she had

not the means to feed and clothe herself, and that he was the only person to whom, as the father of her late husband, she could look for support; I availed myself of the assistance of three respectable natives and constituting them members of the court, I tried the case under Regulation VI. of 1832. They are unanimously of opinion that the plaintiff is entitled to receive a monthly allowance from her father-in-law, and after duly considering the circumstances of the respondent as elicited in the court of first instance from the cross examination of the witnesses with reference to the means of livelihood and property of the respondent, we considered that one rupee monthly was an adequate allowance, especially, as the witnesses in the case spoke to the capability of the plaintiff's father-in-law being able to afford her a place of residence.

The order of the lower court is therefore reversed, and the monthly sum above stated decreed in favor of the appellant (plaintiff,) and costs according to the amount decreed.

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## ZILLAH BEHAR.

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PRESENT: W. TRAVERS, ESQ., OFFG. ADDITIONAL JUDGE.

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THE 5TH APRIL 1851.

No. 22 of 1849.

*Appeal from a decision of Moulvee Syed Mahomed Ibrahim Khan  
Buhadoor, Principal Sudder Ameen of Behar, dated 30th April 1849.*

Maharaj Singh, in the case of Shoodyal Misser *alias*  
Nunhoo Baboo, (Defendant,) Appellant,

.        *versus*        .

Maharaj Singh and Motee Soondree Dossee, (Plaintiffs,)  
Respondents.

THIS suit was instituted to recover rupees 2500, principal, and rupees 383 annas 8, interest due on a bond executed by Omes Chunder Bose, agent of Motee Soondree Dossee, in favor of the appellant Maharaj Singh, under date 5th June 1848.

It appears that Maharaj Singh sold the bond to Soodyal Misser, who, failing to recover the value of it on its becoming due, brought an action against the two defendants, namely, present appellant and Motee Soondree Dossee. Motee Soondree Dossee having confessed judgment, the other defendant, Maharaj Singh, became absolved from further liability; but in passing judgment the principal sudder ameen declared both defendants equally liable for costs. Maharaj Singh now appeals against this order.

The decision of the lower court in this case is clearly wrong. Motee Soondree Dossee, who incurred the debt and gave the bond is obviously the only person chargeable with the expense attending its recovery. The orders of the principal sudder ameen are therefore amended, and the costs of the suit ordered to be recovered from Motee Soondree Dossee alone.

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THE 5TH APRIL 1851.

No. 151 of 1849.

*Appeal from a decision of Sheik Kasim Ally, formerly Additional Moonsiff of Gyah, dated 28th June 1849.*

In the matter of Manick Chund Mohesuree, heir of Kunnyah Lall Mohesuree, (Plaintiff,) Appellant,

*versus*

Khyroo, and by amended plaint Khyroo Jeetun and Meetun, sons of Emamooddeen, (Defendants,) Respondents.

THIS suit was instituted on the 7th September 1848, to recover rupees 23-3-9, principal and interest, being balance of account due by Emamooddeen, father of defendants, up to 1896 Sumbut.

The plaint states that Kunnyah Lall used to keep an arut, or commission shop, and defendant's father Emamooddeen dealt with him from 1889 Sumbut to 1896 inclusive; that Emamooddeen died, and that Khyroo Jeetun and Meetun refused to settle his debts.

The defendant Khyroo repudiates the debt—he says four years have passed away since his father died, asks why the names of Jeetun and Meetun, his brothers, are not included in the plaint; why the particular transactions for which the debt was incurred are not specified and, lastly he claims a release from the charge under the law of limitation, more than 12 years having elapsed since the debt is stated to have been first incurred.

In the supplementary plaint, Jeetun and Meetun, whose names are omitted in the first petition, declare their entire ignorance of the charge preferred by plaintiff; that they never had any business transaction with their father during his lifetime, and have no idea what the plaintiff can possibly mean by prosecuting them.

The moonsiff decides that the original plaint is irregular; that the defendants Khyroo Jeetun and Meetun are all equally liable for the debt, and the fact of plaintiff having only named one (Khyroo) warrants a conclusion that the case has originated in malice. Further that the plaintiff's account books do not agree with the report of the ameen. He therefore dismisses the case.

In appeal, Kunnyah Lall persists in the truthfulness of his accounts, that the omission of the names of Jeetun and Meetun in the original plaint was an error which he quickly corrected, and that the moonsiff does not state in what particular items the account book is at variance with the ameen's report.

To this respondents again reply, reiterating their former pleadings, and especially putting forward the argument of limitation, which bars the admission of appellant's claim.

It was intended to try this appeal on its merits, but when the case came up for a second hearing, the irregularity of the inferior

court in receiving an amended plaint after proceedings had commenced, came under notice.

This procedure being contrary to the Circular Orders of Sudder Dewanny Adawlut, No. 1308, bearing date 17th September 1841, the appeal is dismissed, and plaintiff before the court of first instance nonsuited. Costs due by appellant.

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THE 5TH APRIL 1851.

No. 174 of 1849.

*Appeal from a decision of Moulvee Syed Humeedooddeen, Moonsiff of Aurangabad, dated 6th August 1849.*

Mussts. Hussen Beebee and Rance Afzul Beebee, her mother,  
Musst. Hussen Beebee, (Defendant,) Appellant,

*versus*

Musst. Zurbanoo, (Plaintiff,) Respondent.

Nultoo Khan, first, and Baboo Gehangeer Buksh Khan, second  
• Objector.

THIS suit was instituted by Musst. Zurbano in the first instance, to obtain possession of the entire mouza Tetera Uslee and dakhilee talook Muncie Chuck, pergunnah Shergotty, valued at rupees 147-12-8-17, being three times the amount of the rent roll, likewise to recover 151-11, mesne profits of the land from date of foreclosure of mortgage, making a total of 299-7-8-17.

Plaintiff states that Rance Afzul Beebee and Hussen Beebee, her daughter, executed a mortgage in her favor of the land in question (bye-bil-wuffa) for the sum of 700 rupees. This deed bears date 17th September 1841, and stipulates to repay the sum advanced within three years, or admit a foreclosure of the mortgage and final sale of the property. At the expiration of that period plaintiff accordingly petitioned for foreclosure, and after the usual forms prescribed by Regulation XVII. of 1806 had been fulfilled, the case was struck off. Plaintiff sued for possession, but was nonsuited for an irregularity on the proceedings on the 3rd April 1847. She again sued for sale to be declared final on the 30th June 1847, when the claim was allowed and mortgage duly foreclosed. The present suit is instituted for recovery of mesne profits, possession of the land and registration of name.

The defendants reply separately to the claim set forth, each denying all knowledge of the mortgage or its foreclosure; that no notice had been issued on them by the principal sudder ameen, and that, therefore, the foreclosure was opposed to Construction No. 105, 25th June 1812.

Nultoo Khan, first objector, supports the statement of the defendants, says that he holds a mokurruree lease of all defendants' property in talooka Munee Chuck, under a deed, bearing date 5th Bysack 1254, for which lease he paid the sum of 2000 rupees; that, moreover, the rents of mouza Teterea, subject of the present action, had been sold to Jehangir Buksh Khan, who held the lands as an under-tenant from him Nultoo Khan. Jehangir Buksh Khan, second objector, reiterates the statement of Nultoo Khan.

The moonsiff decides that the defence put in by Mussts. Hussen and Afzul Beebee, cannot stand against the evidence on record to the contrary; that the validity of the deed of mortgage is fully proved by evidence of witnesses and attestation of the kazeer; that defendants had been aware of the proceedings going on for recovery of the property pledged at least since April 1847, the date on which plaintiff was nonsuited in the inferior court, yet that no steps had been taken by them to check the progress of plaintiff's suit, and that all the facts elicited on trial go to show the weakness of defendant's case. The claims of Nultoo and Jehangir Buksh Khan, objectors, are declared inadmissible by reason of their title deeds being executed subsequent to date of mortgage.

The moonsiff disallows the claim for mesne profits set forth by plaintiff, but decrees possession and leave to register name.

In appeal, Musst. Hussen Beebee pleads collusion of the kazeer, states that he was absent when the deed was attested, the sealing and signing being done by his son not by himself; that the appellant could write her own name, and that her husband's interference was unwarranted for the purpose of completing a mortgage; that the issue of two notices for foreclosure was forbidden under Section 8, Regulation XVII. of 1806; and that under Construction No. 1140, the plaintiff's suit should have been dismissed.

#### JUDGMENT.

The pleadings of the appellant are weak and imperfect. The kazeer's signature is certainly omitted on the mortgage deed; but his official seal and the attestation of his son, and that of a number of witnesses fully verify the document. It is the custom of kazeers in the Gyah district to employ a naib, or properly accredited agent. The appellant does not show how her seal, as well as that of her mother came to be affixed to the deed without her consent. The plea of surreptitious interference on the part of her husband will not stand against recorded proof of the payment of 700 rupees through him, and of his authorized agency throughout the whole transaction. Appellant's pleas in reference to a contravention of the law and its constructions are likewise all untenable. The mortgage deed is apparently a true and *bonâ fide* document, I therefore confirm the decision of the moonsiff, rejecting the appli-

cation for mesne profits, which of course can only be held due from the date on which possession is decreed. Costs of this suit due by appellant.

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THE 8TH APRIL 1851.

No. 181 of 1851.

*Appeal against a decision of Syed Mahomed Ali Ashruff, Moonsiff of Behar, dated 31st August 1849.*

Shoochurn Loll (Plaintiff,) Appellant,

*versus*

Musst. Joogun, widow of Sheikh Himmud Ali, Sheikh Irshad Ali,  
and Musst. Nunhee, (Defendants,) Respondents.

THE defendants appeal.

The action was laid in the court of first instance to recover rupees 76-13-9-12, principal and interest due on a bond, dated 9th Assin 1250 F. S., done in favor of Shoochurn Loll, plaintiff, by Sheikh Irshad Ali and his deceased brother Sheikh Himmud Ali. Plaintiff states that he was in the employ of defendants, and the conditions of the bond are that if he should be discharged from their service before the bond fell due, namely, before the month of Maugh 1250 F. S., defendants bound themselves to discharge the debt at once. It so happened that plaintiff lost his situation almost immediately, and as the defendants, Sheikh Irshad Ali and Mussts. Joogun and Nunhee, heirs of Sheikh Himmud, repudiate the debt, he now seeks to recover it through the courts.

The defendants having allowed the case to go by default, the moonsiff passed an *ex parte* decree in favor of Shoochurn Loll, plaintiff.

The appellants file their defence in long detail, but as they have failed to justify their default before the court of first instance, I reject the appeal on that ground only without enquiry into the merits of the case, *vide* case of Bodha Mahto and others, *versus* Radhe Beebea and others, published in the Agra Gazette of 5th May 1848.

Appeal dismissed, with costs.

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THE 14TH APRIL 1851.

No. 29 of 1849.

*Appeal from a decision of Syed Tufuzzool Hossein Khan, Sudder Ameen of Behar, dated 10th November 1849.*

Byjnath Sahoo, Plaintiff,

*versus*

Mr. A. D'Abreo, Defendant.

THIS case was remanded to the lower court for fresh evidence on points specified by the officiating judge of Gyah, under date 22nd June 1848, (see printed decisions of the zillah court for that month.)

The plaintiff sued for balance of a banking account due by defendant for 1900 and 1901 S., and produced his books to prove the debt, together with 10 notes of hand signed with defendant's initials and the evidence of five witnesses.

Defendant, who was heretofore in the service of rajah Hetnarain, repudiates the debt and says that the suit has been maliciously invented at the instigation of the rajah; that all his money transactions with plaintiff were conducted on behalf of the rajah, and that the documents now filed by plaintiff were all fraudulent.

The sudder ameen, in his amended decision, declares the debt to be clearly proved against the defendant by both the oral and documentary evidence adduced by plaintiff, and further that defendant has made no effort to establish the truth of his assertion, pleaded in appeal before the officiating judge on the date above noted, namely, that the plaintiff's banking books were false, and that the rajah Hetnarain was secretly instrumental in urging plaintiff to this prosecution, also that his money transactions with plaintiff were all on the rajah's account and none on his own. The moonsiff accordingly decrees in favor of plaintiff, with costs to defendant.

In appeal, defendant reiterates his former assertion, and further pleads that the documents filed by plaintiff being unstamped, cannot be received in evidence, see Circular Order 7th January 1842, also that the witnesses being unacquainted with English, are incompetent to verify his signature. In this case the balance of evidence is clearly in favor of respondent (plaintiff.) The appellant's notes of hand appear to be all true and valid engagements for payment of the sum specified in each. Proof of rajah Hetnarain's implication is nowhere shown upon the record, and the evidence of Jubboo Lall, who was appellant's agent in many of the money transactions quoted, and who was subpoenaed by appellant, is given clearly against himself.

The orders quoted by appellant in reference to unstamped documents are rescinded by Circular Order, No. 19, September 27, 1850, and, moreover, the orders of the Sudder Court in the special appeal case of Maharajah Jugernath Sahee Deo *versus* Afzul Alee, No. 133 of 1846, especially authorize the admission "*of letters and engagements for the payment of money*" unstamped. This is precisely the character of the papers now filed. Under these circumstances, I have no hesitation in confirming the judgment of the lower court: costs due by appellant.

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THE 14TH APRIL 1851.

No. 154, of 1849.

*Appeal against a decision of Sheikh Kassim Ali, formerly Additional Moonsiff of Gyah, dated 29th June 1849.*

Ghunnoo Dhamee and others, (Plaintiffs,) Appellants,

*versus*

Musst. Bilas Kooer, (Defendants,) Respondent.

Debee Dhamee, objector.

THIS case in the lower court was given against Bilas Kooer, who now appeals.

The suit was laid to recover possession of a house in the occupancy of defendant. She had succeeded to it by inheritance, and continued to hold it under an order of the criminal court passed in accordance with Act IV. of 1840. Plaintiff stated the defendant to be an outcast by reason of having cohabited with her husband's brother, and that by the law of the Hindoos, she had no right to the house. Plaintiffs showed themselves to be the nearest surviving relations of the defendant's deceased husband and his brother Durshun with both of whom she had lived; that both being now dead, food and clothing was all she had a right to claim under any circumstances; that notwithstanding the law, she refused to vacate the house.

Defendant pleaded rightful occupancy of the house, and she further stated herself to be in possession of other property inherited from her deceased husband and his brother Durshun, above named, namely, a beert or prescription right to share in this pilgrim tax of certain religious shrines; that since her husband's death, she had given property of this kind in pledge to various people; that one Ashgur Hossein held a *bye-bil-wuffa* deed of mortgage for one *beert*, valued at 85 rupees; also that she had another house besides the one in dispute, which had been given in pledge to Khonee Dhamee. Under these circumstances defendant urged that if plaintiffs were entitled to any part of her inheritance thus were entitled to all; that having sued for only a portion their claim was irregular and could not be heard. See Circular Order of the 11th January 1839.

Debee Dhamee objector states that the property in dispute to have been pledged to him by Durshun abovenamed for the sum of 25 rupees on a bond, dated 7th Kartick 1256.

The moonsiff decides in favor of the plaintiffs: he states the defendant to have been proved to be a bad woman, and denies her right to inherit property from either her deceased husband, or from his brother Durshun, and further that defendant is silent on the subject of her *right* to inherit, thereby tacitly admitting the prior claim of heirs male.

In appeal, defendant adduces no new argument. Respondents, on the other hand, urge a point very material to the issue of the case, namely, that the house which appellant occupies is the only part of her husband's and Durshun's property, which has not actually come into their possession by direct inheritance, and that therefore the authority cited by appellant, respecting the necessity of a suit for heritable property, comprehending the entire claim was misapplied in their case; that, in fact, the present claim included all the effects of the deceased brothers to which they had not succeeded.

From this it appears that appellant and respondents are directly at issue regarding a matter of *fact*, which must be set at rest before this appeal can be decided on its merits, namely, the fulfilment or non-fulfilment of the conditions required by the Circular Orders of the Sudder Dewanny, dated 11th January 1839. As the lower court has omitted to consider this question, the proceedings in this case are reversed, and the suit remanded for investigation *de novo*. Value of stamps returned to appellant.

THE 16TH APRIL 1851.

No. 164 of 1849.

*Appeal from a decision of Syed Mahomed Ali Ashruff, Moonsiff of Behar, dated 28th July 1849.*

Sheikh Allee Hossein, (Defendant,) Appellant,  
*versus*

Musst. Beebee Wahid Oonissa, (Plaintiff,) Respondent.

Second Defendant before the court of first instance Malick  
Ahmud Hossein.

THIS suit was laid to recover rupees 98-14-4-8, principal and interest, due for land-rent in kitta Bhora, mouza Itawa, pergunnah Havillee Behar, leased by the Mussamut to Sheikh Allee Hossein.

The second defendant, Malick Ahmud Hossein, held the farm of entire mouza Ustawa within which Bhodah is situated. The liabilities of the two defendants were, *in fact*, distinct and separate; but when plaintiff wished to collect her rents they recriminated on one another, each declaring the other party liable for Bhora. On

this account plaintiff had been compelled to sue both of them in the present case.

In course of the prosecution first defendant having admitted usufruct in Bhora for a period of 5 years, plaintiff absolved second defendant from further responsibility, who is accordingly freed from the present action.

In defence Sheikh Allee Hossein, the first defendant, states himself to have been an *employe* in the criminal court of Patna in 1252 F. S., at which time plaintiff was engaged in several transactions connected with the courts; that he (defendant) was then in plaintiff's confidence, and had disbursed money on several occasions for her, which amounted in aggregate to 72 rupees; that plaintiff had given her receipt for this sum which was filed on the record, together with her letter of instructions to him, both duly sealed and attested. That defendant's liabilities for the farm of Bhora amounted to 75-9-5, without interest, at the rates named in his *kuboolat* for a period of 5 years, and that, if 72 rupees were deducted from this, the remainder rupees 3-9-5 was the full amount at which he could be legally assessed, and that sum he (defendant) was ready to pay.

Plaintiff wholly denies the truth of defendant's story, and declares the receipt and letter filed by him to be forgeries.

The moonsiff decrees for plaintiff on the faith of defendant's admission of usufruct. He, considers the defence put in about payment of 72 rupees to be unproved, argues that plaintiff was a *pardah* lady, and that her agency in regard to the execution of the receipt and letter recorded by defendant was not fairly witnessed. The rules of court required the evidence of some relation or intimate friend on such occasion.

In appeal, the defendant insists upon his statement having been regularly proved, that the moonsiff had decreed the case against him without properly weighing the evidence, and further that he had not quoted the rules under which it was essential for relations or friends to be present at the attestation of documents by a lady who cannot appear.

The issue of this suit turns upon the worth of the documents filed by appellant in proof of the payment of 72 rupees on behalf of respondent at Patna.

It appears to me that these papers have been subjected to the closest scrutiny, which the peculiar circumstances of the case could allow of; they are sealed and sworn to by all the witnesses as valid and true, and are quite unexceptionable in appearance.

It is fair also to assume on behalf of appellant that he would not have been allowed to continue 5 years in arrear of rent-free from prosecution, unless some such valid reason as that now adduced had existed. On these grounds, therefore, I dissent from the the judgment of the lower court, and reverse its decision. The appeal is decreed: costs due by respondent.

THE 21ST APRIL 1851.

No. 14 of 1849.

*Appeal from a decision of Moulvee Syed Ibrahim Ali Khun Buhadoor,  
Principal Sudder Ameen of Behar, dated 31st March 1849.*

Musst. Gooloo, (Defendant,) Appellant,

*versus*

Moulvee Mahomed Hossein, (Plaintiff,) Respondent.

Furhut Ali Khan, second defendant.

THIS suit was instituted on the 22nd February 1847, to recover possession of mouzas Amudeepore, Jununkpore, and Belahee, pergunnah Shergotty, appertaining to mehal Serawa, talooka Turwun, by reversal of a *mokururee* grant dated 16th November 1838. Valuation of tenure 581-1-4-7, with an arrear of revenue and proprietary profits at 10 per cent. due by the incumbents, Gooloo and Furhut Ali Khan, from 1246 F. S. to 1254 F. S., amounting to rupees 3077 10-1-16, principal and interest. Total claim rupees 3,658-11-6-3.

The plaintiff states the entire mehal Serawa consisting of 30½ villages, to be held by him under a perpetual *mokururee* grant from Ranees Ameroonissa, at a jumma of 2375-6-13½; that the three villages abovenamed being part and portion of this *mokururee* are in the illegal occupancy of defendants, who profess to hold them under a *mokururee* title similar to his own and under a deed executed by him; that, in fact, this deed was obtained from his dewan, now deceased; that it is a spurious document, and he formerly sued to have it set aside; but that his case was dismissed for non-attendance. This occurred on the 29th March 1844; that the rental of defendants is fixed at 201-9-14, payable at the collector's treasury, exclusive of 10 per cent. proprietary profits due to him; that defendants do not fulfil these conditions, and that he (plaintiff) is compelled to pay their revenue in order to save Serawa, which is a joint and undivided estate from sale for arrears of revenue. He now sues for annulment of the deed, possession of the three villages and revenue due by defendants from 1246 F. S., inclusive.

Defendants maintain the validity of their *mokururee* grant; they also plead valuation of the plaintiff's claim to be irregular; they file receipts for rent from 1246 F. S. to 1249 F. S., given to them by plaintiff, and admitted in evidence on the occasion of plaintiff's suit being dismissed as stated above. They further state that plaintiff tried to recover rent from their tenure in 1250 F. S., by the attachment of their ryots crops, but that he failed, attachment having been taken off by the revenue authorities at their instance.

Defendants affirm that revenue has never been withheld by him, but plaintiff frequently rejects it, and at other times refuses to grant them receipts.

The principal sudder ameen decides in favor of the plaintiff; he pronounces the mokururee tenure of defendants to be void by reason of their not fulfilling the conditions of the grant. Further that the deed itself was a forgery done in collusion with Boodhoo Khan, plaintiff's dewan. That the papers filed by defendants purporting to be receipts for rent were apparently not genuine, and that they were not stamped: also that the evidence of defendants' witnesses was contradictory. Finally that precedents were not wanting to show that plaintiff was entitled both to the recovery of the grant of land and the arrears of revenue which had accumulated on it. He decrees for the entire claim of plaintiff.

In appeal, defendant repeats the arguments used before the court of first instance, and quotes as precedent a decision of the zillah court of Gyah for maintaining her mokururee grant inviolate.

#### JUDGMENT.

The allegation of respondent (plaintiff) that Gooloo and the other defendant took forcible possession of these three villages, and still hold them under an invalid title, is unsupported by any evidence on the record. The tenure must, therefore, be held to be genuine until proved otherwise. The right claimed to annul the deed of appellant (defendant) for non-fulfilment of its conditions is obviously untenable since no penalty for non-fulfilment is specified, and until a forgery has been discovered it certainly conveys a real and indefeasible right of property to the grantees. Under the terms of the grant it does not appear that payment of an arrear due upon it, can be enforced except by a regular suit. With regard to the arrears now claimed, I am of opinion that the receipts of respondent (plaintiff) filed upon the record for the years 1246 F. S. to 1249 F. S. inclusive, must be accepted as good, since no exception was taken to them in the former suit, and I do not coincide in the judgment of the lower court as to their being counterfeit. The revenue and proprietary profits with interest due by Gooloo and Furrhut Ali Khan, from 1250 F. S. to 1254 F. S. inclusive, are decreed to respondent—on all other points the judgment of the lower court is reversed: each party is liable for its own costs.

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THE 21ST APRIL 1851.

No. 172 of 1849.

*Appeal from a decision of Syed Humeedooddeen Ahmed, Moonsiff of Aurungabad, dated 9th August 1849.*

Syed Akber Hossein, and Musst. Beebee Wuzeerun, widow of Ultaf Hossein, (Defendants,) Appellants,

*versus*

Syed Tafuzool Hossein, (Plaintiff,) Respondent.

Syed Bahadoor Alee and others, objectors.

THIS suit was laid to recover rupees 18-12, due by defendants for one-third share of the profits in a farming lease of mouza Bhutkote, pergunnah Seris.

The plaint states that three parties took the lease from Government, namely, first, Neejut Alee and Hossein Buksh, one-third; second, Akber Hossein and Ultaf Hossein, one-third; third, Tafuzool Hossein (Plaintiff,) one-third.

That as they were all proprietors and occupants of Bhutkote, and the lease was only temporary, pending the institution of another settlement under Regulation VII. of 1822, it was understood that this engagement had no reference to proprietary title, which would be adjusted afterwards by the settling officer; that the farming jumna being rupees 26 per annum, plaintiff's liabilities were something less than rupees 9, or one-third; that plaintiff sublet his share to defendants for rupees 12 per annum, with an agreement that the surplus rupees 3, difference between 9 and 12, should be credited in payment of a loan due by plaintiff and others to defendants. A written engagement was executed by both parties about this transaction, and a clause inserted to the effect that the settlement being still pending confirmation, any alteration of existing terms should be at the risk of plaintiff, who was bound to abide by the chance of profit or loss arising from the final orders of the revenue authorities in reference to the settlement. That by the terms of this deed, the sum of rupees 18-12 was due by defendants, but that they refused to give him credit for it.

Defendants admit the truth of plaintiff's statements as well as the authenticity of the bond; but they plead exemption from their engagement by reason of the settlement being altered; that instead of being a farmer of one-third of Bhutkote, he is now only a small co-parcener in the proprietary right, and that under this changed state of affairs the old transaction cannot stand.

Syed Bahadoor Alee and others, objectors, declare themselves to be proprietors of Bhutkote; they do not wish to interfere with

the present, suit which they believe to be founded in truth, but protest against any party meddling with their shares.

The moonsiff states the documents filed by plaintiff to be admitted by the opposite party; that the ameen's report also verifies the transaction; that the parties, who took the farm are proprietors of the village and still occupy it; that this claim refers to rents during the period of the lease and has no connection with the proprietary title of any one. He decrees in favor of plaintiff, on the ground of the bond being valid and good.

The defendants, in appeal, repeat the pleadings used in the original defence.

#### JUDGMENT.

As the respondent (plaintiff) sublet his share in Bhutkote, with a specific condition that no subsequent change in the settlement should affect the transaction, it is clear that the terms of the bond must remain in force until the issue of it is complete. I therefore confirm the decision of the lower court, and dismiss the appeal: costs due by appellant.

THE 24TH APRIL 1851.

No. 7 of 1849.

*Appeal from a decision of Moulvie Syed Mahomed Ibrahim Ali Khan Buhadoor, Principal Sudder Ameen of Behar, dated 25th January 1849.*

Musst. Chuckun, (Defendant,) Appellant,

*versus*

Musst. Lahro Koor (daughter of Roopchund, deceased) and  
Petumber Singh, (Plaintiffs,) Respondents.

Other Defendants in the Original suit, Pershaud Sahoo  
and others.

THIS action was brought to obtain possession of mouza Amunpoora, pergunnah Samai, valued at rupees 1373-9-6, together with an arrear of rent withheld by defendant from 1241 F. S., to 1254 F. S. inclusive, amounting to rupees 2933-12-9-12, total claim 4367-6-3-12. Plaintiff also sues for registration of name *vice* Chuckun.

The plaintiff describes Chuckun to have sold Amunpoora to plaintiffs for 15,000 rupees by a deed dated 3rd Bhadro 1240 F. S., of this sum 9000 was cancelled by an old debt due to plaintiffs by Chuckun, and the remaining 6000 was by mutual agreement of the contracting parties placed in deposit, pending the ejectment of Pershaud Sahoo and others, farmers of Amunpoora, who held a lease from Chuckun, and had advanced her 6000 rupees on the faith of it.



Plaintiffs state that having failed to get possession of Amunpoora they filed a suit for recovery of their purchase money in August 1845; but that the principal sudder ameen dismissed the case, and directed them to recover from defendant in a suit for possession, and arrears of rent due by the conditions of their bond. See proceedings of principal sudder ameen, dated 15th September 1847, hence arose the present suit which was instituted on the 18th of the same month. Plaintiffs go on to state that after the sale was complete, Amunpoora came under the operation of the resumption laws and was settled with them for one year; but at the expiration of that period the property was given back to Chuckun who re-instated the farmers Pershaud Sahoo and others, as before.

Defendant Chuckun denies absolutely the story set forth by plaintiffs about the debt of 9000 and the deposit of 6000. She admits the execution of the deed, but pleads never having received the purchase money: she declares the wasil-bakee papers filed to plaintiff to be forged, and, moreover, inadmissible in evidence by reason of not being stamped; also she pleads the law of limitation, and urges strongly that the present suit cannot be heard since fourteen years have intervened between the execution of the bond and the institution of the claim.

The principal sudder ameen dwells upon the admission of Chuckun as to the genuineness of the deed of sale. He states the old debt of 9000, and the deposit of 6000 to be proved by the wasil-bakee papers and the evidence of witnesses. He denies the right of Chuckun to be exempted from prosecution under the limitation laws. He declares that the period of twelve years must be computed from the date of registration of the deed and not from the date of its execution. Moreover, that plaintiffs' occupation of Amunpoora as a Government farmer for one year must be held to bar the calculation of twelve years in uninterrupted succession, since it amounted to a recognition of their right. The full amount of rent due upon Amunpoora from 1241 F. S. to 1254 F. S. inclusive, is decreed to plaintiffs. The sum of 6000 rupees hitherto held in deposit is awarded to Pershaud Sahoo and others, the farmers, who are ordered to vacate in favor of plaintiffs on receipt of the money, and the costs of the suit declared due by Chuckun save and except the expenses incurred by Pershaud Sahoo and others, who are pronounced liable for their own.

NOTE.—An appeal against this latter portion of the lower court's decree has been brought by Pershaud Sahoo and others. See case No. 10 of 1849, which will be considered in the present decision.

The appellant Chuckun repeats all pleadings used before the court of first instance, but more particularly insists on the application of the statute of limitation to the present case.

## JUDGMENT.

Two reasons are assigned by the lower court for rejecting the plea of limitation set up by the appellant Chuckun. The first one, namely, that computation of twelve years must commence from the date of registration, and not from the date of execution of the deed is obviously wrong in principle, such a procedure would imply that the issue of a bond is incomplete until it is registered which is preposterous. The second reason, namely, that the year's lease of Amunpoora granted to plaintiff by the settling officer amounted to a recognition of his right in the property, and thereby interrupted the reckoning of twelve years, is likewise untenable, since the cognizance of such a matter by the settling officer would in the first place amount to nothing, and in the second place it is clear that plaintiffs' tenure of Amunpoora for that year was a matter of pure convenience, and could have no reference to the judicial question of right. If the plea of limitation is valid it must be shown that twelve years elapsed between the date of the deed and the institution of the first suit, *on the record of which it is admitted by appellant (defendant) that the document is authentic.*

The computation stands thus—

<i>Date of Deed.</i>	<i>Date of Suit.</i>
3rd Bhadro 1240 F. S.	28th Sawun 1252 F. S.
3rd August 1833 A. D.	16th August 1845 A. D.

It will be seen from this that according to the Christian era, the limit of twelve years has been exceeded by thirteen days, whilst the Fuslee date shows the period to be five days short of the limit, as the native bond contains no English date. I accept the reckoning of the Fuslee era and decide the right of plaintiff (respondent) to be heard on the merits of the case. There can be no doubt about the sale of Amunpoora having been a genuine transaction in the first instance. The authenticity of the deed is admitted by appellant Chuckun, and the only material plea set up in defence, is that the price stipulated in the bond has never been paid. As the terms of the bond are, however, in express acknowledgment of payment, this defence can have no weight. I therefore dismiss the appeal.

The lower court has charged Pershaud Sahoo and others, the farmers of Amunpoora, with their own costs in this suit; but as it does not appear that they were an active party in the case, but on the contrary were forced into it by circumstances, I cannot recognize the justice of this order. It is accordingly amended, and the whole expenses declared due by appellant Chuckun.

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THE 24TH APRIL 1851.

No. 10 of 1849.

*Appeal from a decision of Moulvee Syed Mahomed Ibrahim Ali Khan  
Buhadoor, dated 25th January 1849.*

Pershaud Sahoo and others, (Appellants,) Defendants,

*versus*

Musht. Laloo Koor (daughter of Roopchund deceased) and  
Petumber Singh, (Plaintiffs,) Respondents.

THIS is an appeal against the award of costs in case No. 7 of 1849, decided this day. By a reference to the proceedings in that case it will be seen that respondents, Musht. Laloo Koor and Petumber Singh, are absolved from liability in this matter.

This appeal is therefore dismissed : costs due by appellant.

THE 28TH APRIL 1851.

No. 184 of 1849.

*Appeal from a decision of Syed Humeedooddeen Ahmud, Moonsiff of  
Aurangabad, dated 22nd October 1849.*

Doorga Dutt Misser, (Plaintiff,) Appellant,

*versus*

Gheena Gwalla, (Respondent,) Defendant.

ON the 4th June 1849, plaintiff sued to recover the sum of 50 rupees, principal and interest, due on a bond, dated 15th Aughun 1247.

Defendant in the first instance denied the bond altogether, he afterwards admitted it, and filed a bond of agreement signed by himself and plaintiff, showing settlement of the debt for 21-3, and praying that proceedings might be stopped. In a third petition he stated that plaintiff had a separate claim against him of 12 rupees due by a service contract; that this item was included in the 21-3 above noted, and he moved the court to specify this fact on its proceedings. Accordingly the moonsiff decreed 21-3 to plaintiff with specification of 12, due by service contract, the amount payable by fixed monthly instalments without interest, or in default of regular payments that interest was to be levied.

Appellant (plaintiff,) pleads no mention of service contract having been made in his original plaint, that the moonsiff's order in respect to it is arbitrary, and he prays that the decree may be accordingly amended, also that interest be awarded to him as due by the original bond, and further that he be not charged with costs of the suit.

Marks of erasure and alteration sufficient to warrant suspicion of unfair dealing are apparent on the bond of agreement, which settles the debt at 21-3, and it is probable that the particulars about the service contract, of which appellant pleads ignorance, might have been added afterwards.

The omia of the moonsiff are not free from a taint of suspicion in this matter. On consideration of these points the proceedings of the lower court are reversed, and the case remanded for trial *de novo*. The moonsiff is directed to confine himself to the original cause of action as set forth in the plaint. Value of stamp to be returned as usual.

THE 28TH APRIL 1851.

No. 185 of 1849.

*Appeal from a decision of Moulvee Syed Mahomed Furreedooddeen,  
Moonsiff of Jehanabad, dated 20th October 1849.*

Sheikh Mahomed Hossein, (Plaintiff,) Appellant,

*versus*

Moulvee Mahomed Abdool Wahaub and Sheikh Kamyab, (Defendants,) Respondents.

Musst. Shahzadee Begum, objector.

THIS suit was remanded for trial *de novo* to the inferior court on the 15th May 1849. See printed decisions of the zillah court of that date.

The plaintiff sues for recovery of rupees 53-1-6, due by Abdool Wahaub, principal, and Kamyab his servant, for rent of a small share in mouza Chundoorah, pergunnah Betawur. Kamyab is stated to have signed the kubooleut, which document is filed by plaintiff in support of his claim.

The defendants plead that plaintiff's suit is irregular as it omits material points at issue, and includes one defendant who is a non-resident of the place. On this ground they claim a nonsuit.

Kamyab denies that he is a servant of Abdool Wahaub, but admits having signed the kubooleut, denies further that he ever entered in possession. The other defendant Abdool denies all knowledge of the matter or any connection with Kamyab.

Shazadee Begum, who did not appear at the first trial when the case was remanded, now alleges that she is the proprietor of this share of Chundoorah in right of her deceased husband Hosein Alee; that plaintiff has forged the will (waseeutnamah) presented in court to prove his title, and that she (Shazadee) has instituted a suit to have it set aside. She notices Kamyab's admission of never having obtained possession, and states Omid Singh to be the real occupant under a lease granted to him by her.

These pleadings are all denied by plaintiff who declares the will (waseeutnamah) to have been accepted before one of the Patna courts, and submits that it is perfectly valid and good.

The moonsiff absolves Abdool Wahaub from all liability in this suit. He says that nothing has been proved against him either as regards a default of rent, or as a party concerned with Kamyab; that Kamyab signed the kubooleut, and is therefore liable for the rents. Further that Shazadee Begum's objections were inadmissible and conflicting as to facts. He decrees the whole amount to be recovered from Kamyab, with costs, excepting the costs of Abdool Wahaub, which must be recovered from plaintiff.

Against this decision plaintiff and Kamyab both appeal in cases numbered 185, 190, both of which are now before the court. The plaintiff demands a verdict against both defendants instead of one only, and Kamyab repeats the old plea of irregularity cited in the plaint. He cannot deny having signed the kubooleut, but urges again that he never could obtain possession which is enjoyed by Omid Singh under a lease from Shazadee Begum.

In this case the moonsiff has taken no notice of the defect in the plaint pleaded by Abdool Wahaub and the defendant Kamyab, regarding the omission in that document of material circumstances necessary to elucidate the real nature of the case.

Plaintiff has declared his title to the property to be founded on the waseeutnamah, and it appears that at the very time this question of rent is decided by the moonsiff, a suit is pending in his court to have that deed set aside as spurious. The plaint contains no allusion to the waseeutnamah, nor to the objector Shazadee Begum, a person whose interests appear to be much at stake. On this account I conceive it to be obviously defective, and under any circumstances it was certainly the duty of the lower court to dispose of the question of right before it proceeded to the adjudication of rents, which is secondary and incidental. The decision of the moonsiff is reversed, and plaintiff nonsuited in the original action. Costs of this appeal and those of No. 190 of 1849, due by plaintiff (appellant.)

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THE 28TH APRIL 1851.

No. 190 of 1849.

*Appeal from a decision of the Moonsiff of Jehanabad, dated 20th October 1849.*

Sheikh Kamyab, (Defendant,) Appellant,

*versus*

Sheikh Mahomed Hossein, (Plaintiff,) Respondent.

THIS suit is identical with No. 185 of 1849, decided this day. The respondent in this being appellant in the other. Order for

nonsuit on the original action: costs of this appeal due by respondent.

THE 30TH APRIL 1851.

No. 17 of 1849.

*Appeal from a decision of Syed Tufuzzul Hossein, Sudder Ameen of Behar, dated 8th May 1849.*

Gujadur Purshaud, Kewul Kishen, and others, (Plaintiffs,) Appellants,

*versus*

Musst. Tara, (Defendant,) Respondent.

THIS action was laid to recover possession of *about* one beegah of land, rent of fishery, and the right to enclose or release water dammed up by an earthwork. The case depends entirely upon No. 18, this day remanded for trial *de novo*. The same order applies.

THE 30TH APRIL 1851.

No. 18 of 1849.

*Appeal from a decision of Syed Tufuzzul Hossein, Sudder Ameen of Behar, dated 8th May 1849.*

Gujadur Purshaud, Kewul Kishen and Toolsee Ram, (Plaintiffs,) Appellants,

*versus*

Musst. Tara and Gunnoo Singh, (Defendants,) Respondents.

THIS case was remanded by the additional judge of Gyah for trial *de novo* on the 27th November 1847. See printed decisions of the zillah court of that date.

The suit arose out of a dispute about a watercourse dividing plaintiffs' and defendants' villages: this watercourse runs from east to west, and debouches at right angles into another watercourse which runs north and south. Plaintiffs state that at the point at the junction of the two watercourses defendant Tara has raised an embankment which dams up the water and causes it to flood their fields, thereby injuring or destroying about 60 beegahs of cultivations. Further that defendants are upheld and maintained in this aggression by an order of the criminal court under Act IV. of 1840. They sue for a reversal of this order, damages to the amount of 300 rupees, and removal of the embankment.

Defendant Tara denies any encroachment on plaintiff's land: 'she' declares the embankment to form the side of a reservoir belonging to herself and Gunnoo Singh, (who thus comes to be made a defendant in this suit) which reservoir being situated at the angle where the two

watercourses meet may have caused some flooding of plaintiffs' fields, but that she has an old interest in it, and plaintiff has no right to interfere.

The sudder ameen, who visited the spot in February 1849, pronounces the order of the criminal court maintaining defendant in possession of the embankment, and acknowledging her right to dam up the water to be correct. He declares the defendants' deposition in respect to the watercourses to be false, and plaintiffs' deposition on the same subject to be also false. He describes plaintiffs' paddy-fields as extending into the centre of the watercourse, and says that unless an outlet for the water be provided the crop must suffer damage. That defendants' plea to the effect that the water *could* and *did* run off was a physical impossibility, since the earthworks were too high to allow of it. He concludes his proceedings by stating that as the defendant Tara had promised him that no cause of offence should be given to plaintiffs in future, he did not consider further prosecution of the enquiry necessary, and, therefore, dismissed the case.

Against this order plaintiffs appeal, intimating in strong terms that justice had not been done them. The orders of the sudder ameen in this case are ridiculous, without making an effort to ascertain the truth he exhorts both parties not to quarrel, and dismisses the suit under a consideration that they will follow his advice.

The merits of the case obviously rest upon the conditions of a bond of agreement executed in 1841 by both parties in the presence and under the authority of the superintendent of survey. The object of this bond is to settle and determine the boundary between the defendants' and plaintiffs' villages, and its course is defined to be the centre of the watercourse running east and west. If it should be shown that the embankment raised by defendant extends across this watercourse, (and such must be the case of plaintiffs' deposition is true) then the terms of the bond are invalid, and the rights of the plaintiff have been trespassed on. By restricting himself to an investigation of this point, the sudder ameen can have no difficulty in recording a sound judgment: neither party can prevent the other from raising earthworks and embankments on *his own* land, subject of course to an action for any damage inflicted on his neighbours, but the boundary line must be observed. I now again remand this case for re-investigation.

The appeal is admitted, value of stamp to be returned.

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## ZILLAH EAST BURDWAN.

PRESENT: J. H. PATTON, Esq., JUDGE.

THE 7TH APRIL 1851.

Case No. 159 of 1850.

*Appeal from the decision of Mr. J. S. Bell, Moonsiff of the Town of Burdwan, dated 27th March 1850.*

Surupchunder Sadhu, guardian of the minor Dukinisur Sadhu,  
(Defendant,) Appellant,

*versus*

Kauselia Dossée, (Plaintiff,) Respondent.

MAINTENANCE money, action laid at 18 rupees.

The plaintiff sues for 18 rupees on account of maintenance guaranteed to her by the defendant, at the rate of 2 rupees per mensem. Her claim is for nine months from Chyite 1255 to Aughun 1256, during which period the payments have been suspended, and the guarantee was made in adjustment of a suit in *forma pauperis*, filed by the plaintiff to recover property left by her husband. The terms of the compromise were that the plaintiff should receive the sum of 190 rupees in cash and a portion of the household effects, and the money allowance above made mention of, in consideration for which she was to abandon her action, which was done, both parties binding themselves in writing to abide by the conditions of the compact.

The defendant did not enter appearance before the court of first instance until the plaintiff had filed her pleadings and proofs, and his defence was consequently rejected.

The moonsiff decrees for the plaintiff, on the grounds of the adjustment bond, razeenamah, and the pledge made therein, and rules that the defendant do pay her for the future the stipulated maintenance money at the rate of 2 rupees per mensem, and the arrears that have accumulated on that account.

The defendant appeals against the decision, and contends that he has been unfairly cast: first, because he has not been heard in defence of action, and secondly, because the respondent (plaintiff) has forfeited her title to the indulgence she claims by disregarding certain conditions in her husband's will, in virtue of which alone the maintenance allowance was accorded, namely, that she should



remain an inmate of his house and an associate of the members of his family.

The first objection is quite sufficient for the remand of the case for a fresh judgment. The appellant has a right to be heard, and have the issues he pleads drawn and determined. I therefore reverse the order of the lower court, and direct it to pass a fresh decision on a consideration of the defensive pleas.

THE 8TH APRIL 1851.

Case No. 13 of 1850.

*Appeal from the decision of Fuzul Rubi, Principal Sudder Ameen of East Burdwan, dated 17th July 1850.*

Nukurchand Mustofee and Ragoonath Mustofee, (Appellants),  
Defendants,

*versus*

Bamasunderi Dibbea, Respondent, (Plaintiff,)

REVERSAL of summary award in execution of decree, action laid at rupees 1359-12-0.

The plaintiff avers that lot Durgapore is registered in the name of Parbutinath Mustofee and others in the collectorate books; that it consists of 32 villages, and pays a revenue of rupees 1545-1-12; that the defendant Nukurchand and his brother Tiluknath held a 2 annas, 4 gundas share in the estate, which yielded rateably a revenue of rupees 212-7-4-6-19; that they sub-let this share to Tituram Bose in 1244, who was succeeded by his son Mudusudhun, who on his part sold this putnee interest to Bamundass Mookerjea in Aughun 1246, he purchasing the same in the name of Isurchunder Mookerjea. She further states that in Aughun 1252, the defendant Nukurchand and his brother Tiluknath sold her their zemindaree interest in the 2 annas, 4 gundas share of the estate for 1300 rupees, got the deed of sale registered and handed over to her the agreement (kuboolent) of the under-lease; that she thus obtained possession and collected the revenue. The plaintiff then goes on to say that one Sreenath Chuckurbutty obtained a decree against the defendants, and, taking out execution, attached the land in question as their property; that she protested against the proceeding, and her claim was admitted; her title and possession being proved by evidence, and supported by the statement made by the purchaser of the under-tenure, Bamundass Mookerjea, at the joint request of the decreeholder and herself; that the decreeholder notwithstanding appealed summarily against the admission of her claim, and, getting the award maintaining it, reversed, obtained an injunction for the sale of the property. It is to set aside this order, and the sale it enjoins that the present action is brought.

Here follows a supplemental plaint releasing three of the defendants, Kumalnath, Gooruchurn and Runglal, from the operation of the suit, on the ground that their names had been erroneously and inadvertently entered in the plaint.

Bamundass Mookerjea, in his reply, supports the plaint, confirming the plaintiff's purchase of the zemindaree rights of the estate in question to the extent stated and his own of the putnee or sub-tenure.

The defendants Nukurchund and Roogunath, son of Tiluknath, deceased, admit the sale of the putnee interest to Bamundass, and his execution of the engagement confirmatory of the measure and account in the following way for the possession by the plaintiff of the lease in question and the revenue chalans connected with it, as well as the registered deed of sale for the purchase of the zemindaree rights. They affirm that Sreenath Chukurbutty brought an action against them, and they, to rescue their property thus jeopardised, and enable the plaintiff successfully to contest the action on their behalf, made a fictitious transfer of the estate to her, together with all the title deeds, she executing in turn an ikrarnamah, or agreement, to return the same as soon as the suit was decided, and they guaranteeing to pay all costs of court. They further aver that the protest filed by the plaintiff against the attachment of the property in execution of Sreenath's decree was at their instance, and that they defrayed all the expenses of the action; and, moreover, that one of them, Nukurchand, deposited the amount due on the decree with the decreeholder and got the attachment taken off. They also state that they were the means of the plaintiff filing a petition to be allowed to deposit the decree money in court which prayer was rejected, and conclude by pronouncing the present action as a fraudulent proceeding on the part of the plaintiff.

The plaintiff's rejoinder repudiates the benamee transaction, denies the ikrarnamah, and declares that the purchase money was paid by her in cash and bank-notes as per her account-book, which details the amount of the former and the numbers and amount of the latter, with particulars of date, &c.

The principal sudder ameen rules that the point to be determined is whether the plaintiff's purchase, or the defendants' fictitious transaction is the genuine action of the piece. For the following reasons he decides in favor of the former. The deed of sale has received registration and been fully established by the evidence of three witnesses. The account-book satisfactorily proves the payment of the purchase money, and exhibits in detail the manner in which the payment was made. Its validity is unquestionable and it bears the attestation of two witnesses. The chalans of the putnee revenue from 1253, to 1257, inclusive, under the signature of Ishurchunder Mookerjea, are equally entitled to credit and supported by testimony of respectable witnesses. These, one and all, in his

estimation bear incontrovertible evidence to the truth of the plaint, and he decrees for the plaintiff, and annuls the summary award made for the sale of the property. He rejects as altogether untenable the *ikrarnamah*, or agreement, filed by the defendants, as by their own admission the deed, if even genuine, was prepared with a fraudulent intent, and as such inadmissible as evidence in proof of claim, and quotes as precedents favoring this view the Decisions of the Sudder Dewanny Adawlut of date the 9th of July 1850, *in re* Birmomye Dibbea *versus* Kishen Bundu, and 24th March 1846, *in re* Roushin Khatun Chowdrain and the collector of Mymensing.

The defendants appeal against the decision, and contend that the precedents quoted are inapplicable; that the account-book is a fabrication and the evidence of the witnesses discordant. They, moreover, take exception generally to the views taken and inferences drawn by the court of first instance, and argue that if they had no interest in the property why should they wrest it from sale by making good the demand in satisfaction of which it was about to be alienated.

I have carefully revised the principal sudder ameen's proceedings and see no reason to disturb the award he has made. The issues pleaded by the appellants are improbable in themselves and disingenuous in their intent, and clearly inadmissible as proofs of claim under the principle maintained in the Decision of the Sudder Dewanny Adawlut of date 5th August 1814, *in re* Ramindur Deo Rai *versus* Rupnarain Ghose and others. There is no reason whatever to doubt the genuineness of the respondent's purchase, and the registration of the deed of sale and indisputable proofs of the payment of the purchase money, added to the declaration of the sub-lessee, a party totally uninterested in the suit, are conclusive in my mind as to the validity of her title. The defensive pleas, moreover, are, in many instances, unsupported by the necessary evidence; as for instance the petition alleged to have been filed by the respondent at the instance of the appellants praying to be allowed to deposit the amount decreed to Sreenath Chuckrbutty, is not forthcoming, and there is no proof whatever that the attachment was taken off at the request of the appellants as stated in the reply to action, or that they defrayed any portion of the expenses of the suit. The appellants lay stress on the want of proof of the respondent's possession; but the statement of Bamundass Mookerjee and the rent chalans of the under-tenure produced by the latter are ample evidence on that head.

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THE 9TH APRIL 1851.

Case No. 258 of 1850.

*Appeal from the decision of Hameedul Hug, Moonsiff of Mohamudpore,  
dated 28th June 1850.*

Tufuzul Hossein, (Plaintiff,) Appellant,

*versus*

Raisumisa Beebee, (Defendant,) Respondent.

BOND debt on mortgage, action laid at 144 rupees.

The plaintiff sues the defendant for debt on the mortgage of property acquired by dower, consisting of 10 cottahs of building land and a 4 annas share of a tank called Thakurpokur, and a 2 anna, 13 gunda, 1 cowree, 1 krant share of another tank denominated Sushtigurea on bond, executed in Bysakh 1252, amount borrowed being 100 rupees and debt to be repaid in the Maugh following, of which only 10 rupees have been paid in account.

The defendant denies both the debt and mortgage, ascribes action to ill will existing between her husband and plaintiff's agent, Kilas Bati.

The plaintiff's rejoinder goes to show that the defendant's husband and son made overtures of settlement which he declined, unless they first signed an admission of claim.

Nuzru Karigur files a plaint, laying claim to one-third share of the Sushtigurea tank as his property.

The moonsiff remarks in his judgment that the case was referred to arbitration by mutual consent, one Ramnarain Biswas being named the arbiter and an award made which appeared to him just and equitable. He therefore confirmed it and ruled, the suit dismissed and claim rejected. It is true, he observes, that the plaintiff objected to the arbitration, and made reiterated protests against its proceedings while in progress, but the principle laid down in the Decision of the Sudder Dewanny Adawlut of date 18th of March 1848 *in re* Kalikaunt Bidabachusputi, he adds, is fatal to his right to be heard on that score.

The plaintiff appeals against the decision, and contends that the arbitration was made without his knowledge, his pleader having colluded with the defendant and fraudulently signified his assent before the moonsiff, on account of which he had withdrawn his case from his hands, and made it over to another vakeel. He complains bitterly of the injustice done to him under the arbitration award, and prays for justice.

The record shows that the arbitration was appointed on the 16th of May, and on the 29th idem the appellant made his first protest. This protest consisted in a declaration on his part that he had not consented to the arbitration of Ramnarain and knew nothing of the

matter until served with a notice from that individual; that he repudiated his agency *in toto*, and prayed either for the removal of the record to the moonsiff's court, or the appointment of a fresh arbitration. This application was disregarded by the moonsiff, and one or two others of a similar import until the arbitration award came to hand, which, as I have already stated, received immediate confirmation.

I think the appellant has been hardly dealt with in this case. There can be no question that he was ignorant of the arbitration at the moment the fact came to his knowledge, he remonstrated against it in terms which leave no doubt on the mind that he never could have selected the arbiter named. The case supposed in the decision quoted by the moonsiff could not be made applicable to the appellant, as his retraction was an affair *ab initio*, at the very outset of the arbitration move and before any indications of an adverse judgment could show themselves. Besides, the arbitration is in itself somewhat irregular, and as such perhaps obnoxious to some suspicion, as it is of rare occurrence to find litigant parties with conflicting interests referring the adjustment of their differences to one and the same party. Under all these circumstances I think that the case should be re-tried, either under a fresh arbitration or by the moonsiff, and remand it for that purpose, reversing the decree made for the respondent (defendant.)

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THE 14TH APRIL 1851.

Case No. 312 of 1850.

*Appeal from the decision of Munmohun Baboo, Moonsiff of Khundghose, dated 22nd April 1850.*

Tahinund Beebee, (Defendant,) Appellant,

*versus*

Khunkar Nurunubi, (Plaintiff,) Respondent.

Sitanath Das, (Defendant,) Respondent.

BALANCE of amount sale, action laid at 2 rupees.

This is a suit to recover balance of purchase money for a parcel of land consisting of 6 beegahs, 1 cottah, sold by the plaintiff to the defendant, Sitanath Dass, being a portion of the defendant Tahinund's dowry assigned over to the plaintiff under a deed of hibah-bil-ewuz. This is the substance of the plaint. The amount sale is alleged to be 195 rupees, of which 193 have been paid on account.

The defendant Sitanath Dass admits the transaction, and says that the plaintiff owed him 2 rupees on another account, which he has deducted from the purchase money.

The defendant Tahinund avers that she has no concern with the claim for 2 rupees made by the plaintiff, who by his own showing must look to the defendant Sitanath for the amount.

The moonsiff decrees for the plaintiff, and declares Sitanath liable for the amount claimed.

The defendant Tahinund appeals against the judgment, repudiating the whole affair, and denouncing it a fraudulent and collusive proceeding between the plaintiff and Sitanath, with the view of establishing and giving legal efficacy to the alleged deed of hibah-bil-ewuz which she declares to be a forgery. She denies entering appearance in the action and filing a retainer, and repudiates every movement in the suit ascribed to her.

On a review of the record I find that the plaint was filed on the 9th April 1850, and the appellant's reply and retainer on the 15th idem; but both documents, strange to say, at the instance and under the sanction of the plaintiff (respondent.) Again, I observe, the total absence of the necessary notices of action, as served upon the appellant, and an important discrepancy between the actual date on which the reply and retainer were filed, and that recorded on the fly-leaf of the proceedings, prescribed under Circular No. 3, of 3rd January 1845.

These irregularities and omissions are important, and at once vitiate the proceedings of the lower court. Independent of this consideration it is clear that the appellant has not a hearing, and the issues pleaded by her have not been determined. I therefore quash the moonsiff's proceedings, and remand the case for a fresh decision with reference to the foregoing remarks.

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THE 14TH APRIL 1851. . . .

Case No. 313 of 1850,

*Appeal from the decision of Moonshee Khoda Buksh, Moonsiff of Culga, dated 16th August 1850.*

Moodusudun Mitre, (Plaintiff,) Appellant,

*versus*

Ramohun Sirkar and others, (Defendants,) Respondents.

BOND debt, action laid at rupees 281-8-16.

The plaintiff sues the defendants for a debt on bond executed in his favor in Aughun 1254, amount 225 rupees, to be repaid with interest in Jyte 1255. No payments on account made.

The defendant Kalachand Ghose denies both debt and bond, and ascribes action to illwill on the part of Omeshchunder Rai *alias* Moti Baboo, through the agency of his tenant and creature.

The defendant Rammohun Sirkar confesses judgment, and avers that he, Becharam Chowdri, Shamachurn Kund and Kalachand Ghose conjointly borrowed the amount stated from the plaintiff and executed the bond. He adds that the debt was contracted in shares,

i. e., rupees 56-4 each, and expresses his readiness to liquidate his portion.

The moonsiff dismissed the claim, because the plaintiff was unable to file the deed in which it is based though repeatedly called on to do so and fined for his neglect. His pleaders, moreover, declared the document unfit to be offered as an exhibit, being drawn up on two stamps pasted together and declined tendering it, and he himself took no pains to rectify the errors that rendered its presentation inexpedient and of doubtful propriety. The moonsiff records it as his opinion that the defendant Rammohun's confession of judgment is a collusive act, and inclines to the belief that Omeschunder Rai is the instigator of the action from motives of animosity.

The plaintiff appeals and contends that the deed was designedly withheld by his pleaders in collusion with the adverse party, and that its only irregularity was being engrossed on two stamps of 1 rupee each, no single stamp of 2 rupees, the value required, being procurable. He expresses his readiness to pay any fine imposed on his representatives for filing his bond, if pronounced an inadmissible exhibit and holds that under the circumstances he should have been nonsuited.

The order in this suit should have been dismissed without enquiry under the provisions of Act XXIX. of 1841, and not simple dismissal, which bars the institution of a new suit on its merits.

In this case the appellant (plaintiff) pleads an issue; but the exhibit on which that issue rests has not had its validity tested. He expresses his readiness to subject it to the ordeal, and it is only fair to afford him the opportunity. I therefore reverse the moonsiff's decree, and remand the case for the issue of a suitable order.

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THE 14TH APRIL 1851.

Case No. 315 of 1850.

*Appeal from the decision of Poornochunder Mitre, Moonsiff of Kytee, dated 6th September 1850.*

Jugmohun Bose, (Plaintiff,) Appellant,

*versus*

Dhununji Ghose and others, (Defendants,) Respondents.

BALANCE of revenue, action laid at rupees 11-0-5.

The plaintiff affirms that he holds a 4 anna share of the village of Puhalanpore, conjointly with the defendant Mudunmohun Bose, who is his brother, and that since 1254 they have made their collections separately. He adds that in the estate there is a holding of rupees 7-11-15, registered in the name of the defendant Dhununji, for the rent of which he is in balances from 1251 to 1256.

The defendant Dhununji Ghose admits the jumma, but pleads payment of all dues up to 1255 to Thakoordass Ghose, the gomashtha

of the plaintiff's brother; the defendant Mudunmohun, who was the recorded proprietor of the share or possession. He further states that Bholanath Barik was appointed gomashtha by Mudunmohun in 1256, and that he (defendant) paid him 6 rupees on account of that year, averring that he holds receipts of the payments made to both parties under their respective signatures. He disclaims all knowledge of the separate collections spoken of by the plaintiff.

The moonsiff rejects the *jumma-wasil-bakee* papers from 1251 to 1256, filed by the plaintiff, although attested by his gomashtha Thakoordass Ghose, and calls into question their genuineness owing to their fresh and recently prepared appearance and a want of uniformity in the size of the sheets on which they are engrossed. He is satisfied on the other hand that the five quittances of rent filed by the defendant Dhununji are genuine documents, and establish his payment of the demands in question, the signature they bear of the said Thakoordass Ghose, as grantee, corresponding minutely both with that on the village accounts produced by the plaintiff and the writing made before the court by him. The moonsiff is not disposed to give much credit to the evidence of the two persons cited by the defendant in proof of the above payments, because their testimony appears to him too circumstantial in detail to be altogether genuine, and rules that he has failed to adduce proof of the last plea urged, namely, satisfaction of the demand for 1256. He therefore decrees the last item against him, and holding him exempt from the claim from 1251 to 1255, declares him liable to the plaintiff's share of that for 1256, namely, rupees 3-13-17.

The plaintiff appeals against the decision, but assigns no grounds in impugnement beyond a denial of the alleged similarity in the hand-writings of his gomashtha Thakoordass Ghose, and exception in general terms to the views adopted, and inferences drawn by the moonsiff in regard to his suit and the proofs adduced in support.

I have little doubt that this action is owing to Thakoordass' unscrupulousness. He unquestionably granted the quittances filed by the respondent Dhununji, and I am much mistaken if he had not a share in the preparation of the *jumma-wasil-bakee* records tendered in evidence by the appellant. The informalities and objections in regard to the latter, noticed by the court of first instance, go far to condemn them as exhibits in proof of claim; but the consideration most fatal to their validity is their being found in the possession of the plaintiff (appellant,) who not being the recorded proprietor could have had nothing to say to the management. I see no reason to disturb the award made by the moonsiff.



THE 15TH APRIL 1851.

Case No. 316 of 1850.

*Appeal from the decision of Moonshee Khoda Buksh, Moonsiff of Culna, dated 17th August 1850.*

Mudusudun Mittre, (Plaintiff,) Appellant,

*versus*

Jadubchunder Dey and others, (Defendants,) Respondents.

BOND debt, action laid at rupees 293-12 annas.

The plaintiff sues the defendants, Jadubchunder Dey, Ramchunder Dey and Omirta Gosain, widow of Manik Ghose, on a bond for 150 rupees, executed in his favor in Phalgun 1244, and avers that the sum of 70 rupees on account of interest was paid in Phalgun 1248. The present action is for the balance, principal and interest.

The two first named defendants deny claim and ascribe action to the enmity of Omeschunder Rai.

The widow Omirta repudiates the whole transaction, and denounces the suit a malicious and vindictive proceeding instituted towards her on the part of the said Omesh Rai, who was arraigned before the sessions court, and tried for the murder of her husband Manick.

The plaintiff files a rejoinder, which makes mention of a compromise offered by Jadubchunder and Ramchunder, but rejected by him, in consequence of their refusal to guarantee the payment of Omirta's portion of the debt.

These two subsequently file a petition to the purport that matters had been accommodated between them and the plaintiff, they promising to pay and he to receive 19 rupees on account of the debt and rupees 8-14-5 on account of costs of court, making a total of rupees 27-14-5.

The plaintiff then files a plaint expressive of his satisfaction with the above arrangements, and praying the court to absolve the said two defendants from the operation of the suit.

The moonsiff first considers whether the above settlement is equitable, and whether the parties sued are fairly assessed with their portions of the debt. He soon determines that the adjustment is not based on sound principles of justice and equity, and rejects it as a ground for his judgment. He argues that no reason has been shown why Omirta's share should so far exceed that of the other two, the former being rupees 134 and the latter 16 only, and observes that it is not likely Jadub and Ramchunder would have subscribed an engagement for rupees 150, when their joint liabilities amounted to 16, as is now attempted to be made out. He further rules that there is no such condition in the bond, and that the witnesses cited in support make no mention of a divided and apportioned liability. The

terms of the bond, moreover, he holds to be identical with the statement made in the plaint and reiterated in the rejoinder as regards the debt, and remarks that the plaintiff has committed an important lache in omitting to record the alleged payment of 70 rupees on account of interest on the back of the bond as required by its conditions, or naming the person who made it. Under these circumstance he is not satisfied with the genuineness of the claim, or the deed, on which it is based, and rejecting both decrees against the plaintiff.

The plaintiff appeals and contends that the moonsiff's theory of the improbability of a party subscribing a considerable liability for an inconsiderable benefit is erroneous, and that his exception to his witnesses, because they could not speak to the minor details of the transaction is unfair. He also regards it a great hardship that his claim should be set aside, because a case of enmity and illwill is made out between the defendants and Omesh Rai, and contends that the payment of interest on account did not require to be either endorsed on bond or proved, as it took place before the present action was instituted. He supplies the deficiency noticed in the moonsiff's judgment as to the party paying the amount by declaring it to have been the defendant Omirta's deceased husband, and admits that his pleaders committed an important error in not examining his witnesses regarding the alleged overtures for settlement.

I see such a strange similarity in the features of this and appeal No. 313, decided by me yesterday, that I find little difficulty in ascribing the action to the same underhand influence actuated by a more vindictive and malicious spirit. It is impossible to credit one word of the alleged bond and debt, and the whole history of the proceedings evinces a deeply laid scheme for the ruin of the widow Omirta. I have no reason to find fault with the views adopted and inferences drawn in the moonsiff's judgment, and accordingly affirm it.

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THE 19TH APRIL 1851.

Case No. 128 of 1850.

*Appeal from the decision of Gopalchunder Ghose, Moonsiff of Bhatturia, dated 25th February 1850.*

Lukhimuni Dibe, (Plaintiff,) Appellant,

*versus*

Nukur Sheikh and others, (Defendants,) Respondents.

VALUE of a pepul tree, action laid at 15 rupees.

The plaintiff is half proprietor of the talook of Gopalpore, and claims her share of a pepul tree grown on *mal khumar* land, and sold by the defendant, which she values at 30 rupces.

The defendant resists the claim on the ground : first, that the tree stood on his ancestral *mal* property, and secondly, that it was planted by his father. He admits its sale for 6 rupees, and declares the valuation put on it by the plaintiff excessive.

The defendant, Brijmohun Rai, the other half proprietor of the talook, sides with the plaintiff and corroborates the statements advanced in the plaint.

The moonsiff rules that the defendant has failed to prove his first plea that the tree stood on his property, but establishes the second that his father planted it. He also holds it proved by the evidence of both parties that it stood in the landlord's *mal khumar* and by the witnesses cited by the defendant Nukur Sheikh, that it was sold for 6 rupees. He, therefore, decides in conformity to the usage of the country, ruling that the planter of the tree is entitled to two-thirds and the landlords to one-third of its value, and adjudicates accordingly : awarding to the plaintiff 12 annas as her share of the amount realised by sale.

The plaintiff appeals against the award, and contends that the rule held by the moonsiff is both contrary to usage and opposed to the principles of justice, the landlord being clearly entitled to all products of the soil in actual possession.

There is no law in this case, but the moonsiff has correctly defined the usage of the country, and it is an admitted principle in jurisprudence that in the absence of the former the latter must rule. I therefore see no reason to disturb the judgment he has made.

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THE 19TH APRIL 1851.

Case No. 129 of 1850.

*Appeal from the decision of Gopalchunder Ghose, Moonsiff of Bhatturia,  
dated 25th February 1850.*

Brijmohun Rai, (Plaintiff,) Appellant,

*versus*

Nukur Sheikh and others, (Defendants,) Respondents.

VALUE of a pekul tree, action laid at 15 rupees.

This suit is brought by the other half proprietor of the Gopalpore estate for his share of the value of the tree. The pleadings are identical with those in the preceding case and the decision the same. The same grounds of appeal are set forth, and for the reasons above recorded the same judgment must rule.

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THE 19TH APRIL 1851.

Case No. 278 of 1850.

*Appeal from the decision of Adeelooddeen Mahomed, Acting Moonsiff of Mungulcote, dated 8th July 1850.*

Brijolal Hajra and others, (Defendants,) Appellants,

*versus*

Bharutchunder Dey Dulal, (Plaintiff,) Respondent.

DEBT on bond and mortgage, action laid at rupees 108-9.

The plaintiff sues the defendants for debt, principal 65 rupees, and interest rupees 43-9, on a bond and mortgage of two mangoes and half share of a tank called Hidna.

The defendants deny debt, bond and mortgage, and ascribe action to enmity on account of a village quarrel. They further aver that they were absent from the village at the time the alleged deed is said to have been executed by them, and that both the orchards claimed in mortgage, have been alienated by sale, one to Khetrenath Naga and others in Assar 1252, and the other to Panchanund Ghose in Kartik of the same year, a fact with which the plaintiff is well acquainted, having fixed their valuation, and witnessed both the transaction and the deeds executed on the occasion.

They maintain, moreover, that they could not have pledged the half share of Hidna as the property belongs to their mother, and they have no control over it.

The purchasers of the two orchards come into court and advance proprietary claims.

The moonsiff rules the bond proved by the evidence of the three remaining witnesses, who subscribed it after the plaintiff's rejection of the testimony of Jankinath, the engrosser of the deed and nephew and Gopinath, the son of the defendant Brijolal Hajra, and the death of another. He further contends that it is a circumstance favoring the claim that the defendant Brijolal is the vendor and the defendant Gopalchunder, the purchaser of the stamp on which the bond is drawn up, and that the handwriting of Jankinath on papers filed with the record corresponds with the writing of the body of the deed, and Gopalchunder's signature as made before the court with that said to be his sign manual on the bond. The moonsiff also lays stress on an alleged offer to compromise matters made on the part of the defendants, and rejects the evidence in proof of *alibi* adduced by them. Under these circumstances he decrees for the plaintiff, and declares the defendants liable for the claim.

The defendants urge the following grounds in objection to the judgment; first, that there is no proof that the identical Gopalchunder was the purchaser of the stamp beyond the endorsement

of that name, which might have been fraudulently made; secondly, that the alleged similarity between Jankinath's ordinary writing and that in the body of the bond is a pure fiction; thirdly, that the moonsiff has accepted in this suit the evidence of a party he denounced as unworthy of credit in another; and lastly, the invalidity of a bond having a mortgage attached without registration.

I dissent from the views adopted by the moonsiff in every particular of his decision. I do not consider the bond proved because its engrosser has not attested it, and those who have being illiterate men cannot substantiate its identity with the instrument executed on the occasion, supposing such to have been executed. It strikes me that neither did Jankinath prepare the deed nor Gopalchunder attest it, and that the rejection of their evidence by the plaintiff is a deep laid scheme to mislead. The fact of the appellant Brindal being a stamp vendor has also, in my opinion, been taken advantage of to give colour to the deception, and a fraudulent endorsement of sale gone far to complete it. By fraudulent, I mean fictitious, the purchaser Gopalchunder not being proved identical with the appellant Gopalchunder. There is, to my mind, not the most remote similarity between Jankinath's ordinary handwriting (and I see it almost daily as he is an assistant or supernumerary in the court establishment,) and the writing in the body of the bond, nor do I find any resemblance between the real and alleged signature of Gopalchunder. The moonsiff appears to have labored under some misapprehension regarding the alleged compromise between the litigant parties, as the evidence shows that that course was recommended to the appellants by mutual friends, but indignantly rejected by them. The moonsiff has fairly incurred the charge of inconsistency brought against him by the appellants in the third ground of their objection, as he clearly admits in this suit the evidence of the witness Huladhur which he unreservedly rejects in another brought by the same party at present in appeal before the principal sudder ameen's court.

The moonsiff, moreover, assigns no reason for disbelieving the evidence brought in proof of the defensive plea of *alkbi*. In consideration of the foregoing, I annul the decision of the lower court, and record a verdict for the appellants.

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THE 22ND APRIL 1851.

Case No. 2 of 1850.

*Appeal from the decision of the Collector of East Burdwan, dated 31st May 1850.*

Bungsidhur Ghose, (Defendant,) Appellant,

*versus*

Gosaindass Hujra and others, (Plaintiffs,) Respondents.

RESUMPTION of lakhiraj land, action laid at 54 rupees.

The plaintiffs are the half sharers of the talook of Kurunji, and Noyab Mehedi Hossein is the other half sharer, and they conjointly sued the defendant for the resumption of 1 beegah of *lakhiraj* land; but the estate falling into arrears passed out of their lands by sale under Regulation VIII. of 1819, and the suit was consequently struck off the file.

The auction purchaser of the talook was Bishenchand Baboo, from whom in 1256 the plaintiffs re-purchased it, and issued the usual notice on the defendant for the settlement of the 1 beegah originally sued for. The defendant disregarded the notice, and hence the present action to resume.

The defendant avers that there is a considerable quantity of *lakhiraj* property in Kurunji belonging to Ramanath and others, which is hereditary and registered in his name in the collectorate under taidad No. 46810; that of these lands he purchased 1 beegah  $2\frac{1}{2}$  cottahs for 35 rupees on the 4th Kartikh 1234 from Gungagobind Rai and others, the heirs and survivors of the said Ramanath; that when the taidad in question was filed it was accompanied by the copy of a char or release for a portion of the land, and bore a record to the effect that the other grants and titles were not appended, because they were in the possession of the other sharers; that another parcel of the same land has also been sold as *lakhiraj* by the former talookdar Sarupchunder Rai, of which proof can be adduced, and a portion attached by the late Rani Komul Komari. They hold the action barred, moreover, because the sellers have not been made a party, and the entire land borne on the register has not been sued for.

The plaintiff's rejoinder ridicules the notice of a register filed by a *Singh* conveying rights to a *Rai*, and affirms that the land in dispute as well as that attached by Komul Komari is exclusive of the parcel contained in the register.

Nitanund Rai, one of the sellers of the land, files a petition, alleging that they, *i. e.* the family, are indiscriminately styled *Singhs*, *Rais* and *Mujumudars*, which titles were accorded to them by the Mohamedan rulers in times past for service rendered; that his

ancestors called themselves *Mujumudars*, and that he styles himself *Rai*, and that his father Muthuranath and his uncle Ramanath filed the register in question under the former title. He further supports in general terms the defensive pleas, and declares the action brought with the view of throwing discredit on the titles under which he holds his *lakhiraj* possessions.

The collector rules that though repeatedly called on to do so, and many opportunities afforded him, the defendant has completely failed to adduce any proof confirmatory of the validity of his *lakhiraj* title. He also holds that there is no evidence to show that the land set forth in the deed of sale is identical with that contained in the register or taidad, or that the land in dispute forms part and parcel of it. Under these circumstances he decrees for the plaintiff, and declares the land liable to resumption.

The defendant is dissatisfied with the award, and contends that his case is made out by one of the parties who owned and subsequently sold the land in dispute; that the respondent has failed to adduce proof of the land being *mal* and subject to assessment, and that the collector should have ordered a local inquiry to ascertain whether or not the land is identical with that contained in the register.

It has been ruled more than once that the party suing to assess is not required to adduce proofs of the land's liability to assessment, but the holder of the tenure its right to exemption. In the present instance the appellant has most signally failed to establish his title to hold rent-free, and without such proof the right to assess cannot be disputed. The collector was quite right to uphold the respondent's claim to fix rent in the absence of any valid title to exemption, in the shape of original grants and the like on the part of the appellant. I therefore affirm his decision, and dismiss the appeal.

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THE 22ND APRIL 1851.

Case No. 326 of 1850.

*Appeal from the decision of Siteekaunt Singh, Moonsiff of Potnah,  
dated 24th August 1850.*

Sitanath Chuckurbutty and others, (Defendants,) Appellants,

*versus*

Kunjabehari Mookerjee, (Plaintiff,) Respondent.

POSSESSION of *lakhiraj* land, with mesne profits, action laid at rupees 256.

The plaintiff details the circumstances under which he became possessed of certain ancestral property, and avers that the defendants forcibly ejected him from 8 beegahs, 15 cottahs in 1253.

The plaintiff then files a supplementary petition, releasing certain parties from the operation of the suit, and again another to the same purport.

The defendants, at different periods, file their replies to action; but before their doing so the moonsiff rules that the suit should be tried *ex parte*, and, rejecting their defence, decrees for the plaintiff.

The defendants appeal against the decision, and pray for a hearing, which has been denied them in the court of first instance.

The defensive pleas have not been heard and determined, and the case is incomplete without the adoption of such a course; I therefore remand it for a fresh decision on a consideration of the issues pleaded by the appellants.

The moonsiff has, in two instances, exceeded his competence in taking supplementary plaints. His attention is hereby drawn to the irregularity.

THE 23RD APRIL 1851.

Case No. 318 of 1850.

*Appeal from the decision of Gungachurn Shome, Moonsiff of Saleenabad, dated 19th August 1850.*

Ramnarain Mittre, (Defendant,) Appellant,

*versus*

Gourmohun Sein, (Plaintiff,) Respondent:

BALANCE of revenue, action laid at rupees 5-10-0.

The plaintiff sues the defendant for balance of rent from Bysakh to Sawun 1256, on a jumma recorded in his name in the village of Jaunpore, of which he (plaintiff) holds the ijara.

The defendant does not file the prescribed reply to action, but presents a petition late in the proceedings in refutation of certain issues pleaded by the plaintiff.

The moonsiff determines those issues, and, ruling that they do not affect the validity of the claim, decrees for the plaintiff on a consideration of the four court decrees in his favor filed by him, and the village accounts from 1253 to 1255 attested by the gomashtha and two witnesses.

The defendant appeals against the decision, and contends that justice has been denied him. He maintains that the moonsiff has assumed a fact which does not exist, and of which there is not a particle of evidence, and on that fact mainly formed his judgment, namely, that Gobind Seuli, the attester of the village accounts, was the respondent's gomashtha during the period for which the loazima papers are filed.



On a review of the record it is apparent that the defendant (appellant) has not filed the usual reply to action, and cannot therefore be said to have pleaded in the prescribed form. The moonsiff notwithstanding entertains his objection, and disposes of it as if made in the regular way. This is manifestly wrong. If the defendant refused to plead in the established mode, he should not have been heard at all. I therefore quash the moonsiff's proceedings as informal and irregular without entering into the merits, and remand the case for trial *de novo*.

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THE 23RD APRIL 1851.

Case No. 328 of 1850.

*Appeal from the decision of Nobin Kishen Paulit, Moonsiff of Cutwa, dated  
21st August 1850.*

Radhabulub Chowdree, (Defendant,) Appellant,

*versus* .

Biperchurn Deb, (Plaintiff,) Respondent.

BOND debt, action laid at rupees 47-0-4.

The plaintiff sues the defendant for a debt on bond executed in Phalagoon 1256. Debt to be repaid in Bysakh 1257. No payments on account.

The defendant denies both debt and bond, and says that the action has been brought to counteract a claim for gold and silver ornaments deposited with the plaintiff by his maternal grandmother during infancy. He challenges a comparison between his handwriting and his alleged signature on the bond, and avers that he was absent from home on the date of the execution of that deed.

The plaintiff rejoins and adds that the defendant made overtures for a settlement by instalments after institution of action.

The moonsiff rules that the following points require to be determined, the debt and bond, the overtures for settlement by instalment, the pleaded *alibi* at the time of execution of bond, and the alleged enmity between the litigant parties as the cause of action. He considers the first fully established by the testimony of the engrosser of the deed, the evidence of two witnesses subscribing it, and the similarity on comparison between the signature of the defendant made before him, and that said to be his sign manual on the bond. He holds the second point also proved by the evidence of three witnesses distinct from those who depose to the first. He rejects the testimony in proof of the *alibi* pleaded by the defendant as he looks upon its circumstantiality and minuteness, considering the illiterate condition of the deponents, on evidence of its having

been suborned, and deems the evidence in support of the last issue insufficient. He therefore decrees for the plaintiff.

The defendant appeals against the award, and contends that the bond is a forgery, because the paper on which it is drawn up is old and the writing fresh; that of three of the witnesses examined for the plaint, one is a relative and two dependents and servants of the respondent; that there is no similarity between his alleged and real signature, that it is not likely he would make overtures for a settlement in the presence of witnesses, and that his plea of *alibi* is established.

I have examined the bond, and do not consider it in any degree open to the suspicion cast upon it by the appellant, and perceive the greatest possible similarity between the signatures of the appellant made before the moonsiff and on the deed. The assertion made by the appellant as regards the connection between the respondent and three of his witnesses is not supported by the record, and I see no reason to dissent from the views adopted by the lower court with reference to the alleged settlement and *alibi*. I therefore affirm the moonsiff's award, and dismiss the appeal.

THE 23RD APRIL 1851.

• Case 335 of 1850. •

*Appeal from the decision of Mr. J. S. Bell, Sudder Moonsiff of East Burdwan, dated 17th August 1850.*

Ramnarain Das, (Defendant,) Appellant,

*versus*

Shama Sumudri Dasi, (Plaintiff,) Respondent.

MAINTENANCE, action laid at rupees 18-6-8.

The plaintiff avers that her husband, the defendant, Ramnarain Das, has two wives, herself and Thakmuni, and that in consequence of disagreements between them he made her an allowance of 7 rupees a month, and gave her a separate house to live in; that this state of things continued for some time, during which the plaintiff had a daughter who died; that on her second pregnancy, owing to her mother and other relatives coming to reside with her, her expenses increased and she was induced to apply to her husband for an addition to her allowance; that he not only refused the indulgence, but at her rival Thaku's instigation withdrew that heretofore accorded; that she was thus left without maintenance and compelled to have recourse to the criminal court in quest of her rights; that she so far succeeded as to induce a compromise on the part of her husband, who again made her an allowance, but

more limited in amount, namely, 3 rupees, with which she was compelled to be content; that she received the stipend up to Poos 1255; but was again deprived of it through Thaku's machinations, and that she now sues for a life grant of the above sum, and the arrears due from Maugh 1255 to Sawun 1256.

The defendant Ramnerain Das denies the alleged maintenance allowance of 7 rupees a month, and contends that his circumstances could never have admitted it, he being a blacksmith by profession and his earnings very small. He admits the withdrawal of the more limited allowance made, not by him but his father, on the grounds of the plaintiff's infidelity and general profligacy, and maintains that she has forfeited all title to a maintenance from him, having given birth to an illegitimate offspring. He denies the plaintiff's appeal to the criminal court for a maintenance and his alleged concession in consequence.

The moonsiff rules that the points to be determined are whether the defendant Ramnarain stipulated to make the plaintiff the allowance of 3 rupees a month, and made sundry payments conformably thereto, or whether the plaintiff is disentitled to support from the defendant on the score of profligacy? In proof of the first issue he examines three witnesses, who maintain the fact and establish it to his entire satisfaction. He rejects the testimony of three persons cited in support of the second issue, as he deems them incompetent to speak to a point, which, from its private nature, could not be known to strangers; but only members of the respective families, and contends that the support afforded to the plaintiff by the defendant's father is a violent presumption of her innocence. Holding the local inquiry sought by the defendant barred by Section 17, Regulation IV. of 1793, and the precedent established by the decision of the Sudder Dewanny Adawlut of date 4th September 1849, *in re* Situlpershad, appellant, *versus* Gourpershad and others, respondents, he decrees for the plaintiff, and declares her entitled both to the allowance claimed, and the arrears that have accumulated thereon.

The defendant Ramnarain appeals against the decision, and contends that the moonsiff's rejection of his prayer for a local enquiry and re-issue of his subpoena for other witnesses of unexceptionable character is tantamount to a denial of justice.

\* The record shows that the suit was instituted before the moonsiff on the 19th July 1849, and that though the appellant had ample time to bring the defensive pleas to maturity he failed to do so. As these pleas, however, are material to the general issue and susceptible of proof, I am unwilling that the case should be finally adjudicated without their being determined. I therefore remand the case with instruction to the moonsiff to permit the re-issue of the appellant's subpoena, provided process is taken out within ten days after

authority, and pass judgment with reference to any fresh evidence that may be brought before him.

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THE 24TH APRIL 1851.

Case No. 15 of 1850.

*Appeal from the decision of Moulvee Fuzul Rubi, Principal Sudder Ameen of East Burdwan, dated 24th July 1850.*

Umbikapershad Rai, and after his decease his heir and survivor,  
Sardapershad Rai, (Plaintiff,) Appellant,

*versus*

Shibpershad Rai and others, (Defendants,) Respondents.

ENFORCEMENT of conditions of instalment bond, action laid at rupees 3073-13-10-13-17.

The plaintiff avers that he had a claim against the defendants on account of loans and embezzlements, and that on the 15th Aughun 1255 they settled accounts, and a balance of rupees 2893-7-15 was struck in his favor, which they agreed to liquidate by instalments, executing a bond, and pledging in security for due fulfilment the putnee talook of Olara and Kaneerambati, the durputnee talook of Sarungpore and the tenure of the 3rd degree. See putnee of Belpokuria. He adds that the instalments ranged from 1255 to 1259, and that the first default was to be considered as a forfeiture of the accommodation; that the first demand of 600 rupees became due in the month of Maugh last, and the money not being forthcoming, the penalty was incurred. Hence the suit for the whole amount due.

The defendants deny the execution of the instalment bond and all the particulars detailed in the plaint.

The principal sudder ameen rejects the instrument on which the claim rests, and, declaring it obnoxious to the suspicions detailed at large in his record of judgment, decrees for the defendants, charging the plaintiff with all the costs of court.

The plaintiff appealed against the decision and sets forth at length the grounds of his objection. He died on the 14th of Aughun last and was succeeded by his son, the present appellant.

On the 21st of December 1850, Sardapershad Rai filed a petition, stating that the matter at issue between him and the adverse party had been arranged, and that they had agreed to pay him the sum of 2700 rupees in satisfaction of the whole debt, to which he had assented, the proceeds of the sale of the Olara estate in the collector's office attached by his father being looked to among other resources for the realization of the amount due.

The respondents on their part also file a petition confirmatory of the above and expressive of their willingness to abide by the conditions set forth.

I decide the case in conformity to this mutual arrangement, reversing the principal sudder ameen's award; but as the proceeds of the sale of Olara have been attached three times over the question of their liability for the present debt must be determined in the suit for execution. It is unnecessary to make any order relative to the subject in this judgment.

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THE 24TH APRIL 1851.

Case No. 256 of 1849.

*Appeal from the decision of Nobinkishen Paulit, Moonsiff of Cutwa, dated 29th May 1849.*

Ramjin Sheikh and Kudumoollah, (Defendants,) Appellants,

*versus*

Gopal Moolah and Neamut Moolah, (Plaintiffs,) Respondents.

REVERSAL of summary award under Act IV. of 1840.

This appeal was decided by my predecessor in confirmation of the award made by the lower court (*vide* page 47 of the decisions of East Burdwan for April 1850.) It went before the Sudder Dewanny Adawlut in special appeal on the 6th of July last, and was remanded for a fresh trial on a consideration of the issues set forth in the superior court's decision of date 2nd of September following, page 461. Those issues were the right of possession and the fact of dispossession, and it is quite clear from the record that neither of them has been determined.

The former orders made with reference to the suit, therefore, must be considered null and void, and a fresh decision passed by the moonsiff after taking evidence from the respondents of their possession prior to the order of the magistrate upholding that of the appellants, and adjusting the question of their dispossession by the latter. The case is remanded for the above purpose. The moonsiff will also bear in mind that though a landlord has a right to demand rent, when no title to hold rent-free can be shown, yet that that right does not extend to the dispossession of a tenant in actual occupancy in favor of another.

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THE 25TH APRIL 1851.

Case No. 337 of 1850.

*Appeal from the decision of Sitakaunt Singh, Moonsiff of Potenah, dated  
27th August 1850.*

Gulamchunder Baite and others, (Defendants,) Appellants,

*versus*

Kashinath Sen, (Plaintiff,) Respondent.

ADVANCE on loan, action laid at rupees 3-9-5.

The plaintiff sues the defendants for re-payment with interest of 3 rupees borrowed on the 2nd Bysakh 1255 for the purchase of a big drum, loan to be adjusted in Kartick of the same year.

The defendants deny the loan, and aver that the plaintiff's wife wished them to weave some cloth for her, which on their refusing to do the plaintiff assaulted them, and that they were on the point of instituting proceedings against him in the criminal court for the assault, when friends interposed, and they were induced to abandon their intention.

The plaintiff rejoins and says that the defendants did bring their charge of assault; but that the prosecution broke down; that those proceedings were instituted after filing of present action, and that on receiving notice of the same the defendants agreed to settle the matter and pay the debt.

The moonsiff decrees for the plaintiff, ruling the advance proved by the evidence of two witnesses cited in support, but withholds the award of interest, no specification of which appears to have formed part of the transaction. He also considers the testimony of the court peon, Guruchurn Malik, serving the notice of action, conclusive as to the defendants' admission of claim and readiness to settle; and rejects the evidence of the two persons brought in proof of the plea of enmity, urged by the defendants from its extreme discordance. One of the deponents ascribing the alleged illwill to refusal to weave cloth, and the other to refusal to give evidence in a suit brought by the plaintiff.

The defendants contend in appeal that the discrepancy noticed by the moonsiff in the evidence of their witnesses makes rather for than against them, as it clearly shows that there is bad blood between them, and from more than one cause that there is no documentary evidence in proof of claim, and that the evidence is false and suborned.

None of the grounds assumed in appeal, is, in my opinion, tenable; the argument in favor of the discordance in the evidence in support of the defensive plea of enmity is ingenious, but not effective to the maintenance of the issue especially urged. *Au reste,*

I see no reason to dissent from the views adopted by the moonsiff, and dismiss the appeal.

THE 25TH APRIL 1851.

Case No. 339 of 1850.

*Appeal from the decision of Gungachurn Shome, Moonsiff of Suleemabad, dated 19th September 1850.*

Lubung Munjuri, mother of the minors, Khudiram Rai and others,  
(Plaintiff,) Appellant,

*versus*

Kartick Serail and others, (Defendants,) Respondents.

BREACH of contract, action laid at rupees 60-2.

The plaintiff avers that the defendants, Kartick, Madhub and Gunesh (Serails) were indebted to one Rebuti Dibbea; that a settlement of accounts took place between those parties, and a balance of 31 rupees struck in her favor; that the debt was then assigned over to her (plaintiff's) deceased husband, Mudusudun Rai, by the said Rebuti, and that the defendants executed an agreement bond in his favor, promising to pay yearly in the month of Maugh 5 rupees, from 1245 to 1249, and the balance 6 rupees in Maugh 1250, on the mortgage of 7 beegahs, 6 cottahs of land, situate within their 6 annas share of the village of Kenna Dehura.

The plaintiff sues as heir at law and the guardian of her infant sons, her husband having died in Assar 1256. The amount claimed is principal 31 rupees, and interest rupees 29-2, making a total of rupees 60-2.

\*The defendants do not enter appearance.

The moonsiff decrees for the plaintiff, deeming the claim just and the demand proved. While recording judgment, however, the moonsiff allows himself to be addressed by Sibchunder Sirkar, one of the pleaders of his court, who protests against the action, and declares it brought with the view to prejudice the purchase of certain lands by his client, Ramkumul Bhutacharj, from the defendants. The moonsiff, in consequence, appends to his proceeding a clause, favoring the above view of fraud and collusion; but qualifies the record by ruling that the adjustment of the question involved is unnecessary in the present enquiry, and that his judgment is not intended to affect proprietary title in any degree or shape.

The plaintiff takes exception to the moonsiff's proceedings, first, in recording a gratuitous opinion unfavorable to the validity of the deed on which she bases claim, and, secondly, in allowing a party utterly unconnected with the suit to make a suggestion with reference to it, and acting upon that suggestion.

The objections raised in appeal are just and reasonable. The moonsiff was clearly wrong in allowing Sibchunder to make any remark affecting the suit, and still more wrong in making a record with reference to that remark in his judgment, particularly, when it tended to prejudice a deed which formed the basis of the award he was making, and which was neither gainsaid nor impugned during the investigation of the case. It was argued by the appellant's pleader that the moonsiff should have made an order, declaring the mortgaged property liable for the claim; but the reasoning is unsound because such a condition did not form part of the plaint, and the moonsiff could not, in his decree, go beyond the prayer that document sets forth. I have said that the moonsiff acted unadvisedly in giving expression to his suspicion regarding the validity of the agreement bond, and with that qualification of his award I affirm his judgment.

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THE 26TH APRIL 1851.

Case No. 340 of 1850.

*Appeal from a decision of Hurrymohun Bose, Acting Moonsiff of Bamunarah, dated 13th September 1850.*

Sheikh Bukshoo, (Appellant,) Claimant,

*versus*

Jugisur Hati, (Plaintiff,) Respondent.

Sheikh Uzhur and Jumilla Beebee, (Plaintiffs,) Defendants.

BALANCE of revenue, action laid at rupees 31-13-2.

The plaintiff affirms that in the village of Moratipore, there is a holding rented at rupees 37-2-5, which is registered in the name of the deceased Sheikh Neamat, and occupied by his son Uzhur and his widow Jumilla Beebee. He is the talookdar of Moratipore, and sues for balance of revenue after deducting payments from 1252 to 1256, inclusive.

The defendant Uzhur does not defend action.

The defendant Jumilla avers that her husband settled upon her a 4 annas share of the holding in question and other *lakhiraj* property as dower in Bhadon 1253; that in Chyte 1255 she sold her right to the claimant, Sheikh Bukshoo, for rupees 49-4-0; that she has paid all the rent due during her period of occupancy, namely, from 1253 to 1255, and holds receipts for the same; and that the rent for 1256 must be looked to from the claimant. She declares Uzhur, the owner of the 12 annas share of the holding, and liable for such balance as may have accrued on that account.



The claimant files a petition, laying proprietary title to the 4 annas share sold to him by the defendant Jumilla, and avers that he has paid the revenue for 1256, but failed to obtain a quittance.

He supports in general term the averments made in the reply to action.

The moonsiff deems the defensive pleas unproved, and regards them in the light of a collusive proceeding, particularly, as the claimant Sheikh Bukshoo has failed to adduce proofs of purchase. He rules on the other hand that the plaintiff proves his title to demand the rent, as talookdar of Moratipore, and the defendants' liability as occupiers of the holding recorded in Neamut's name by the evidence of witnesses and the local enquiry made by the ameen; but fails to show the balance as due from 1252 to 1254, from the papers filed under the attestation of his gomashtha, ranging from 1252 to 1256; these records, however, in the moonsiff's judgment, establish a balance of rupees 27-8-5, on account of 1255 and 1256, which he decrees to the plaintiff, deeming interest barred in consequence of their being no specification of the periods of demand on account of which it is claimed.

The claimant appeals and thinks himself aggrieved, because the witnesses cited by him in proof of his purchase have not been examined, and prays for a remand of the case for supply of the omission.

I cannot allow this appeal. The claimant's rights and interest are untouched by the award, and he is quite as free to advance them in a court of justice as if it had never been made. The points to be adjusted by the moonsiff were whether the rent balance was due and from whom, and he has to my mind correctly determined the issues. As to the claimant, he has his remedy at law. I therefore see no reason to interfere with the decision of the moonsiff.

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## ZILLAH WEST BURDWAN.

PRESENT : C. GARSTIN, Esq., JUDGE.

THE 7TH APRIL 1851.

No. 8 of 1851.

*Appeal from the decision of Moulvee Asudoollah, Moonsiff of Radhanuggur,  
dated 26th December 1850.*

Ungut Potdar, (Defendant,) Appellant,

*versus*

Mooktaram Potdar, (Plaintiff,) Respondent.

RUPEES 6-9-15, price of silver.

The particulars of this case will be found at length at page 152 of the published decisions of this zillah, dated 13th August 1850.

On the above date this case was remanded to the moonsiff as incomplete and requiring further enquiry, and this officer, after deputing an ameen to make a local enquiry, and after examining some more witnesses himself, on the 26th December, again, decrees it, and upholds his former orders, mainly apparently on the grounds of there being certain discrepancies in the statements of the witnesses for the defence.

Defendant again appeals. He denies that his witnesses differ in any material points and objects that plaintiff has now brought forward witnesses whom he had not originally named; that the moonsiff, though he directed that local enquiry should be made, takes no notice of its having failed owing to the neglect of the plaintiff to attend, that he has fully established his case whilst his opponent has no proof whatever.

After carefully considering all the facts of the case I must say that I do not understand the grounds upon which the moonsiff has founded his opinion, or what discrepancies he observes in the statements of defendant's (appellant's) witnesses to justify the orders he has given. One man says that the dispute occurred at bathing time, and all the rest in the evening, or at the close of the day, &c., and I see no particular discrepancy in this, as they all speak clearly to the fact. Now, on the other hand, the plaintiff's (respondent's) story is improbable in itself, and certainly, in my mind, is any thing but satisfactorily established.

He says that he and Ungut (appellant) went to sell a pair of bowtees belonging to him (plaintiff,) and that when they were shown to Musst. Khettromonee, the latter took them saying that Ungut was in her debt; that a dispute arose and that other persons were called in, and in the end the woman kept the clasp, part of the bracelet, and gave back the rest, Ungut agreeing to pay for them.

Of the four witnesses examined in the moonsiff's court for the plaintiff, two only pretend to have been present at the time, (the other two speak from hearsay,) and they both state that Ungut weighed and gave the woman the pieces of silver; and this certainly differs more with the plaintiff's own account of the transaction than the defendant's (appellant's) witnesses do with one another, and the probabilities of the case, I think, are altogether for the defence.

Under these circumstances, and as I am in no way satisfied that justice has been done, or that the plaintiff's (respondent's) claim is well founded, I decree the appeal; and reverse the moonsiff's orders, making plaintiff (respondent) liable for all costs of suit.

THE 9TH APRIL 1851.

No. 24 of 1850.

*Appeal from the decision of Baboo Chunder Seekur Chowdhry, Principal  
Sudder Ameen, dated 15th August 1850.*

Purmanund Neogee and others, (Plaintiffs,) Appellants,

*versus*

Mahabharut Rai and others, (Defendants,) Respondents.

• THIS suit is brought by plaintiff to obtain possession of 16 beegahs of lakhiraj land, situated in mouza Kadakoolee.

Plaintiffs state that their ancestor, Ram Lochun Neogee, in 1162 B. S., obtained a grant of some 175, 10 bs. of dewuttur and mohutran lands lying in Kadakoolee and other villages, from the former zemindars of Bishenpore, and in 1209 registered them in the collectorate; that in 1227 B. S. Muddun Gopal Rai (defendant's father) ousted them of a portion of these lands whereupon they (plaintiffs) brought a suit against him for possession, in reply to which, the said defendant pleaded that the lands, in all only 12 or 13 beegahs, were resumed chakeran lands, and were mal and not lakhiraj; that whilst the case was pending Muddun Gopal died, and his wife Hurry Pria conducted the suit, which however ended in a decree in their (plaintiffs') favor, given by the sudder ameen for 16 out of the 20 beegahs they had claimed; that Hurry Pria appealed the case, and on the 28th November, 1836 got the sudder ameen's order reversed, and a decree given for her by the principal sudder

ameen, upon which they (plaintiffs) again made a special appeal, which was at first struck off, but on a review was decided by the judge, who held that the sudder ameen had no jurisdiction to try the case, and therefore nonsuited it, giving them (plaintiffs) permission to bring a fresh suit for the lands under 30, Regulation II. of 1819; that whilst all this was going on, the lands were attached by Government, but being found to be of small extent, &c. they were again released; that as they were forcibly dispossessed of these lands they now bring this suit under 3, Regulation II. of 1805, and though they admit that the rest of the lands under their sunnud (175 beegahs) have been taken from them, still as this does not affect the lands in dispute, which are distinct and separate, they now sue for them under the permission given in the above case of special appeal, and with reference to the provisions of Regulation II. of 1819, beg to be restored to them as their lakhiraj property.

Mahabharut Rae defendant, in reply, states that the suit is barred under the statute of limitations, and in support of this cites a decision No. 78, passed in the Sudder Dewanny Adawlut. He states that from the date of their being ousted up to the institution of this suit is 28 years, 1 month and 4 days; and from the same period to date of first suit, 11 years, 11 months, 20 days; and that even giving plaintiffs the benefit of the whole time the former suits were pending 7-2-16, it makes a total of 19-2-6, which allowing the ten days due in the first suit, still leaves a lapse on the whole time of no less than 8-11-18 to be accounted for; that the very fact of their bringing this suit under Regulation II. of 1805, shows that this is the case that plaintiffs admit that their sunnuds are invalid, and how then can they claim under them? He then gives a long statement of the cases, which have been pending about these lands, and says that plaintiffs admitted in the Khas appeal case, that they were out of possession both before and after the resumption case.

Plaintiffs rejoin as before, adding that the time reckons from the date of permission given them to bring a new suit, and that defendant has no proof of the lands being resumed chakeran.

The principal sudder ameen, after enquiring in the collectorate as to the validity of the plaintiffs' lakhiraj, and, receiving a report unfavorable to it, on the 15th August 1850, dismisses the case. He enters at much length into its merits, and remarks that plaintiffs have no proof whatever of the lands being lakhiraj. He states his opinion that in the special appeal the sudder ameen's orders only were nonsuited, whilst those passed by the principal sudder ameen were modified. And he remarks that the proceedings then held prove that the lands paid rent for many years; that Ram Lochun Neogee himself admitted to the collector in 1229 B. S., that he had been dispossessed for four years, that is, from 1225, whilst the plaintiffs state that it was in 1227, and that the

very fact of plaintiffs bringing this suit under Regulation II. of 1805, shows that the time allowed by law has passed.

Plaintiffs appeal, and state that, even allowing that their sunnuds have been held to be invalid in other cases, it has nothing to do with the lands now in dispute, which are distinct and separate, and have never yet been claimed as mal, and that till this be done no person has a right to oust them. They object altogether to the principal sudder ameen's explanation of the order passed in the special appeal, and declare that this suit is brought under Regulation II. of 1805, only because they were *forcibly* dispossessed; that defendants have never proved the lands to be resumed chakeran, as they pretend, &c.

I regret to say that in the present state of this case I can pass no order upon it as the proceedings of the lower court are incomplete, inasmuch as the principal sudder ameen has neglected to proceed in it in the manner laid down in Section 10, Regulation XXVI. of 1814. Had this been done, the question of limitation urged in the defence would at once had been disposed of, and, if established, all further enquiry would have been unnecessary and needless. Independent of this, the points at issue are not laid down. Under these circumstances, as there is nothing for it but a remand, I decree the appeal, and, reversing the orders passed, return the proceedings for revision on the above points, after which a new order will be passed on the merits.

The usual order passed for return of stamp.

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THE 14TH APRIL 1851.

• No. 206 of 1850.

• *Appeal from the decision of Moulvee Abdool Uzeez, City Moonsiff of Bancoorah.*

Gudadhur Singh and others, (Defendants,) Appellants,

*versus*

Gooroochurn Protihar, (Plaintiff,) Respondent.

RUPEES 45-9-4, reversal of a distraint case under Regulation V. of 1812, and value of crops.

The particulars of this case will be found detailed at length in the published decisions of this court for the month of July 1850, from page 184 to 188.

This case was remanded by the officiating judge with instructions to the moonsiff to make further enquiry as to the legality of the distraint, and that officer, after taking further evidence upon this point on the 27th November 1850, again decrees it for plaintiff. He

considers it to have been illegal, and remarks upon certain discrepancies in the evidence of the witnesses examined in support of it; and he also considers it fully proved that the land is plaintiff's, and held by him under the lakhirajdar (claimant,) and not from Hurry Ata, as stated in the defence; he therefore reverses the distraint suit, and awards compensation for the crops carried off at certain rates stated in his proceeding.

Defendants appeal. They state that there is no contradiction in the statements of the witnesses, and that plaintiff himself never objected that the Regulation V. suit was illegal, and that no notices, &c., had been served; that the moonsiff has gone out of the way, and has declared to whom the land belongs, whereas the sole question was the validity of the distraint; that they have proved that the land belonged to their ryot Hurry Ata, who pledged it to plaintiff, and though the taidad has been filed on the part of the lakhirajdar, there is no proof that this land forms any part of it.

Plaintiffs rejoin but state nothing new.

In this case plaintiff (respondent) claims the land and crops as his, and says that he tilled it, when defendants (appellants) attached and carried off the crops. Defendants also claim it as theirs, and say that it was in the hands of their ryot Hurry Ata, who, being in debt to plaintiff, made it over for a time to him; but falling also in arrears with his rent, they attached his crops and with them the portion now sued for. The only question is which of these statements is true? It is admitted on all hands that plaintiff (respondent) sowed and tilled the land, and under these circumstances it is incumbent on the other party to show beyond all doubt that they were entitled to the crops. This I do not think that they have done, and, on the whole, I agree with the moonsiff that the evidence is against them; and I agree with the lower court in the opinion that the distraint suit should be reversed; but as the moonsiff has besides this given an opinion as to the ownership of the land, which was not the point in dispute; I modify that part of the order, which refers to this, and award only the amount decreed as value of the crops.

The appeal is decreed, and the order modified as above, each party to pay his own costs as to the appeal.

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THE 15TH APRIL 1851.

No. 19 of 1851.

*Appeal from the decision of Baboo Gopee Kishen Bonnerjea, Moonsiff of Kotulpore, dated 31st December 1850.*

Govindram Bhuddur, (Defendant,) Appellant,

*versus*

Thakoor Doss Joogy and others, (Plaintiffs,) Respondents.

RUPEES 147-6-7, to reverse certain orders passed under Regulation VII. of 1799, and set aside a settlement made consequent upon them with possession of lands, &c.

Plaintiffs state in this case that in lot Juggurnathpore, mouza Basoo Batee, they hold certain lands paying a mokururee jumma of 80-3-1; that in 1255 B. S. the defendants (the talookdar and gomashtha) brought a suit against them, under Regulation V. of 1812, for a balance due upon them of 26-11, and subsequently another under Regulation VII. of 1799, for a balance of 44-14, but that they (plaintiffs) in both cases deposited the sums claimed; that defendants afterwards brought a third suit under Regulation VII. for the balance of 22-6, and as they (plaintiffs) had not the means of opposing it, got a decree (*ex parte*) for the amount, and, on the 11th May 1849, without their knowledge and order for a re-settlement of the lands; that they (plaintiffs) knew nothing of what was going on, and only learnt it on the 17th Assar 1256, when they were actually ousted by the ryots; that their 12 annas kists were all paid off by the first two cases mentioned, and that had they known of the order for re-settlement they would in like manner have liquidated the balance sued for in the last one; that they had actually paid the gomashtha 5 rupees on account of this last kist (though no mention of it was made in the case) and still hold his receipt for it. In short, they now sue to set aside the last Regulation VII. case, and the settlement made subsequent to it, laying their claim with wasilat, &c., as above.

Gopal Ghose gomashtha, in reply, denies the justice of the claim. He admits having brought the three suits stated, and with regard to the last one (the one complained of) says that plaintiffs never opposed it, though they were duly informed of its institution; that he never got the 5 rupees stated, and, with regard to the re-settlement, remarks that the usual proclamation was made for it, and ample opportunity given to plaintiffs to pay in the money; and that it was only on their failing to do this that it was carried out.

Govind Ram Bhuddur talookdar replies to much the same effect, and repeats that full opportunity was given to plaintiffs to settle for the amount due by them, and that it was only on their failure to do this that the re-settlement was made.

Plaintiffs rejoin that in the Regulation VII. case the deputy collector did not file in it the proofs upon which his orders were based, and that there is nothing improbable in their having paid up the 5 rupees stated.

On the 31st December 1850, the moonsiff decides the case. He remarks that the only question is—is the last Regulation VII. case and the re-settlement based on it, valid or the reverse? He holds that plaintiffs should be restored to their lands, because he does not consider that they (plaintiffs) had any opportunity given them to pay the balance; that the case was decided *ex parte*, and without proof, and by it the re-settlement was made without plaintiffs' having the opportunity of paying up the money. He admits that it is not very clear whether the 5 rupees was paid or not, but says that all he has to do is to consider whether the re-settlement is good; that no zemindar can oust any ryot until he has proved him to be in arrear, and that this was not done in the above (Regulation VII.) case, and yet upon this only, they (plaintiffs) have lost their lands; that plaintiffs are old ryots, and but slightly in arrears, and he thinks that, if they pay them up, they should be restored to their lands, and he ends by setting aside the order for, and the re-settlement itself, and directs that plaintiffs shall pay into some *proper* court the balances due, and then be restored to the lands claimed. He gives them a proportion of costs for the Regulation VII. case, but does not allow the wasilat claimed.

Defendant appeals and objects to the order as unjust. He says that he brought the suit under Regulation VII. for balances due by plaintiffs, and when they did not defend it, it was decreed for him; and eventually an order for re-settlement made, plaintiffs having been proved to be in arrears; that the moonsiff's order does not touch that given in the Regulation VII. case, whilst it reverses the settlement made consequent upon it, which is absurd; that the re-settlement is good and valid, and that the lands are now held by other parties, who cannot be ousted by such an order as this; that the 5 rupees were never paid, and that the moonsiff himself does not deny this; that plaintiffs were fairly in balance, and were never ousted by force, but only by the re-settlement made on their failing to pay up.

I cannot for a moment uphold the orders passed in this case, as I think them unjust, they are grounded apparently on the idea that the Regulation VII. case was not fully enquired into; but it is certain that plaintiffs (respondents) knew that it had been instituted, and yet they both neglected to defend it, or to pay up the balances due by them, and which indeed, up to this time, they have not done.

Under these circumstances I consider both the orders in the above case, and the re-settlement made subsequent to it, fair and just, and that it is solely owing to plaintiffs' (respondents') own neglect that they have lost their lands.



I therefore decree the appeal, and reverse the moonsiff's orders, holding plaintiffs (respondents) liable for costs.

THE 19TH APRIL 1851.

No. 15 of 1851.

*Appeal from the decision of Moulvee Abdool Uzeez, City Moonsiff of Bancoorah, dated 12th December 1850.*

Hurree Koondoo and others, (Plaintiffs,) Appellants,

*versus*

Suroop and Gopal Surmah, (Defendants,) Respondents.

RUPEES 62-9-5, to recover amount due on an ikrarnamah.

This case was remanded for further enquiry, &c., by the officiating judge of this zillah on the 4th September 1850, and its details will be found in the published decisions of this court for that date, page 297.

The case has now been decided by the present moonsiff of Bancoorah, who holds that as the sale purchaser bought only defendants' rights and interests in the lands pledged by them to plaintiffs, he had no power whatever to alter any arrangements made before that period; and that the plaintiffs, by agreeing to the re-settlement made by him, and thus conceding their lien upon the lands, have no longer any claim upon the defendants for the balance sued for, and he therefore dismisses the case.

Plaintiffs appeal. They state that they have deducted all that they have received on account of defendants' acknowledged debt, and that the balance now claimed is fairly due; that they have yearly had to pay up to the sale purchaser (decreedar) the rent of the land (rupees 7,) which in fact has swallowed up all the proceeds, so that nothing was left for the payment of their debt; and that the suits being dismissed, cuts off all hope of their recovering any portion of what is still due to them.

In this case it appears that defendants mortgaged certain lands in payment of a debt due by them to plaintiffs, and made them over until this should be liquidated. In the meantime a third party holding a decree against defendants attached them, and notwithstanding plaintiffs' claim, eventually had defendants' rights and interests in them sold, he himself becoming the purchaser. After this he (third party) re-settled them with the plaintiffs as ryots, taking from them the whole proceeds as rent, and they (plaintiffs) now sue defendants for the balance on the plea that they cannot be realized from the land.

It is quite certain that defendants (respondents) in good faith made over the lands to the plaintiffs in payment of their debt, and

that, but for the sale, this would have been duly liquidated, and I do not see how, in justice, they (defendants) can be called on to pay this money as it is clear that the decreeholder had, under the sale, no right to alter the existing arrangements, and that the plaintiffs (appellants) have only themselves to blame for having allowed him to do so, and that at any rate their claim on defendants (respondents) cannot be upheld.

Under these circumstances, and as I see no cause to interfere with the orders of the lower court, I have upheld them, dismissing the appeal, and holding plaintiffs (appellants) liable for costs.

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THE 21ST APRIL 1851.

No. 44 of 1851.

*Appeal from the decision of Kazei Hamid Ally, Moonsiff of Radhanuggur, dated 20th February 1851.*

Radanath Rai and another, (Plaintiffs,) Appellants,

•  
*versus*

Seeroo and Govind Doss, (Defendants,) Respondents. • •

RUPEES 29-2-2, balance of rent.

In this case plaintiffs state that defendants under an ikrar, dated 5th Poos 1242, hold in mouzas Pyrasale and Chungdar Baree two jummas, one of 4-3-5, and another of 2-10, in all 6-13-5; that for 1245 and 1246 defendants have paid no rent, wherefore this suit is brought to enforce payment with interest, &c., amounting altogether to rupees 29-2-2.

Seeroo Doss defendant, in reply, denies the claim, and states that he owes plaintiff nothing; that he has in the above mouzas 2 jummas, one for 4-3-5, and the other for rupees 2, but has paid up every thing for 1245 and 1246, and holds plaintiff's dakhilas for the same. He denies the agreement *in toto*.

Plaintiffs rejoin as before.

The moonsiff dismisses the case, on the ground that the ikrar upon which the claim is founded is on plain (unstamped) paper, and that this under Circular Order of the Sudder Dewanny Adawlut, dated 27th September 1850, cannot be received.

Plaintiff appeals and objects that defendant admits holding 2 jummas under him, though not exactly to the amount claimed; that the ikrar is in reality a kubooleut, and being less than rupees 12 in amount, need not under Regulation X. of 1829, be stamped, and that defendants' plea of payment should at least have been enquired into.

The moonsiff has dismissed this case, on the plea that the ikrar is not stamped, and that under the court's orders no document of

this kind can be received; but he has overlooked the fact that under Section 31, Schedule A, Regulation X. of 1829, all kuboolahs and documents of this description (and the ikrar is clearly of this kind) under rupees 12 in value, are exempted from being stamped. Under these circumstances it appears to me that it should have been received and its validity, &c., ascertained, as this has not been done, and the case in its present state is manifestly incomplete, I have decreed the appeal, and, reversing the moonsiff's orders, have remanded the case for full and complete enquiry.

The usual order passed for return of stamp.

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THE 23RD APRIL 1851.

No. 6 of 1850.

*Appeal from the decision of T. B. Mactier, Esq., Officiating Deputy Collector of Bancoorah, dated 18th July 1850.*

Ram Churn Bonnerjea, Talookdar, (Plaintiff,) Appellant,

*versus*

Nubeen Malakar and others, (Defendants,) Respondents.

SUIT to resume 6 b. 16 c. of invalid lakhiraj land in mouza Puddumpore, lot Roësür, laid at rupees 138-3-19.

Plaintiff states in this case that in the above mouza defendants hold certain lands, amounting in all to 6-13, which they state to be lakhiraj, but which are really mal; that as they (defendants) have paid no attention to his call upon them to settle for these lands he now sues under Regulation II. of 1819, to have them resumed.

Defendants, in reply, state that the lands are punchuk, (pay a quit rent,) and that they have been held on these terms long anterior to the Company's raj; that the jumma fixed on them is 10 annas, and that they have paid no more than this for many years past, either to plaintiff or to his predecessors, and that under Regulation II. of 1819, lands of this description cannot be resumed; that they are, moreover, dewuttur, and therefore not liable to resumption at all.

Plaintiff rejoins that the lands are not punchukee, and that defendants cannot prove that they are so, &c.

The deputy collector holding that the lands in dispute are punchukee, and as such not liable to resumption under Regulation II. of 1819, nonsuits the case, making plaintiff liable for costs.

Plaintiff appeals. He states that when he called upon defendants to settle for the lands they simply said that they were lakhiraj, and made no mention of their being punchukee till the suit came before the deputy collector; that that officer has not fully enquired into

the case, and that there is no proof that the lands are punchukee; that the three dakhilas filed are worth nothing as proof, and that the defendants' witnesses are of low caste and not trustworthy.

Radakanth defendant replies again, and says that he filed the dakhilas and brought in his witnesses, and plaintiff made no objection then; that he never said that the lands were lakhiraj, and was never called on to settle for them; that one of the dakhilas is given by plaintiff himself; that it is needless that he should file other proofs in this case, as it is not brought to enhance his rent but to resume the lands which cannot be done; that he has many other dakhilas, &c.

I see no cause to interfere with the orders passed in this case, as it has been ruled by the Sudder Dewanny Adawlut that lands paying a punchuk jumma are not liable to resumption under Regulation II. of 1819. Under these circumstances the deputy collector's orders are affirmed. Plaintiff (appellant) liable for costs.

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THE 23RD APRIL 1851.

Case No. 7 of 1850.

*Appeal from the decision of T. B. Mactier, Esq., Officiating Deputy Collector of Bancoorah, dated 3rd December 1849.*

Manick Raha, Talookdar, (Plaintiff,) Appellant,

*versus*

Suroop Patur and others, (Defendants,) Respondents.

THE particulars of this case will be found detailed at full length in the published decisions of this court for the months of October 1849 and May 1850.

On the last occasion (23rd May 1850) the officiating judge remanded the case for further enquiry for the reasons stated in his proceeding, and the deputy collector, after consulting the remembrancer of legal affairs upon it, and receiving that officer's opinion on the 3rd September 1850, again nonsuits the case, holding plaintiff liable for all costs.

Plaintiff again appeals as before.

Subsequent to this the officiating judge (on the 24th December 1850) refers the matter to the Sudder Dewanny Adawlut, and solicits their opinion as to the fact of a punchuk (or quit rent) jummas coming under the head of lakhiraj; and in reply the court state that they do not think so, and that a claim of this description cannot be considered as one made for lands held free of assessment.

Under these circumstances it is clear that the deputy collector's orders are just and proper, and that the nonsuit awarded by him

must be upheld. The appeal is therefore dismissed and the deputy collector's orders affirmed. Plaintiff held liable for costs.

THE 24TH APRIL 1851.

No. 9 of 1850.

*Appeal from the decision of T. B. Mactier, Esq., Officiating Deputy Collector of Bancoorah, dated 27th September 1850.*

Gosain Doss Chowdhry and others, (Plaintiffs,) Appellants,

*versus*

Bhyrub Chunder and others, (Defendants,) Respondents.

THE particulars of this case will be found detailed at length at page 148 of the published decisions of this zillah for the month of May 1850.

On the 25th of that month the officiating judge remanded this case for further enquiry for the reasons stated in his proceeding, and the deputy collector after its return on the 2nd September directed that an ameen should be sent to survey the lands, and as they were great in extent that a mohurir and two other persons should accompany him, plaintiffs to deposit the amount of their expenses, &c.

On the 11th September plaintiffs presented a petition objecting to this, and stating that it was very hard that they should have to deposit money for the survey of lands, &c., with which they had no concern, and upon this on the same day an order was passed that they must do as they had been ordered; and on the 27th September on the plea that this had not been done, the deputy collector dismissed the case.

Plaintiffs again appeal. They say that their claim was only for 45 bs., and that when defendants, in their reply, (before the remand) stated that they with others held very much more land than this, the deputy collector ordered his nazir to enquire into it; and that officer sent an ameen who reported that there was in all 1247 bs.; that the deputy collector's last order clearly intends that the whole of these lands are to be re-measured, and the same ameen is to be employed; and that because they did not deposit the money required for this purpose, their case has been dismissed; that their claim is but for 45 bs. and the only question is—is this valid or not? and that it is very hard that they should have to pay for the survey of lands with which they have nothing whatever to do.

In the first instance the deputy collector dismissed plaintiffs' case, because he considered that the lands amounted to more than 100 bs., and therefore belonged to Government. He has now again dismissed it on the plea that plaintiffs have not deposited the amount required for the deputation of three or four persons to make a re-survey. The order does not state precisely what lands shall be surveyed,

but that "as there is a great deal, it is necessary that a mohurir, &c., should accompany the ameen," and it seems highly probable that it was intended to re-measure the whole of the 1247 bs., with a view to its ultimate resumption.

Be this as it may, it is quite clear that one ameen could easily have surveyed the whole land in dispute in this case in a few days, and that the deputy collector's orders directing a mohurir and others to accompany him was uncalled for and needless: and I consider also that plaintiffs had good reasons for objecting to it, inasmuch as no more than the 45 bs. sued for could ever have been awarded to them.

Under these circumstances, and as I consider appellants' (plaintiffs') objections good and valid, I decree the appeal, and, reversing the deputy collector's orders, again remand the case to be dealt with in the manner indicated in the officiating judge's order of the 25th May 1850. The usual order for the return of stamp.

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THE 28TH APRIL 1851.

No. 1 of 1851.

*Appeal from the decision of Moulvee Abdool Uzeez, Sudder Ameen of Bancoorah, dated the 11th December 1850.*

Gunganarain Rai, (Defendant,) Appellant,

*versus*

Messrs. Erskine and Co. and others, (Plaintiffs,) Respondents.

SUIT to obtain the reversal of an order under Act IV. of 1840, and for possession of jummaee rights in the Roy Poken tank and its bund, for the destruction of certain vats, &c., built by defendant Gunganarain, with value of bricks. Claim laid at rupees 774-10-18.

The details of this case will be found at page 171 of the published decisions of this zillah for the 13th June 1850, on which date the officiating judge remanded the case as incomplete, in consequence of the principal sudder ameen (who had decreed it for the plaintiffs) having neglected to proceed in it in the manner required in Regulation XXVI. of 1814.

On the remand the proceedings were made over to the sudder ameen, who had at that time been appointed to the district, and that officer after completing his enquiries, &c., on the 11th December 1850 again decrees it in favor of the plaintiff. He considers that plaintiffs have fully proved their case by evidence, both oral and documentary, and have shown that they obtained a pottah for the lands in dispute, at a jumma of 10 rupees, from Ram Mohun and Mahanund Naik, and that this pottah was entrusted to Gunganarain defendant, their gomashta; that plaintiffs also paid the Naiks 7 rupees as salamee, and 40 rupees in advance for rent through Gunganarain, and placed

some bricks upon the land; that plaintiffs had possession of the tank, and that their servants used to take the small fish out of it, whilst their laborers had huts on the embankment; that plaintiffs made the bricks sued for, and that the charges for making them are duly set down in the accounts which have been filed and authenticated; and that some of these accounts are signed by Triluknath Rae, Gunganarain's own brother; that the deputy magistrate ascertained in the Act IV. case that the bricks were plaintiffs, and it is not likely that they would have been placed on another man's lands. He discredits defendant's statement and the evidence brought in support of it, and deems the pottah filed by Gunganarain false and collusive; and he considers it highly improbable that defendant would (as he states) have placed bricks on the lands before he had got a pottah for it. He holds it clearly proved by the evidence of witnesses of both parties that Gunganarain was really plaintiffs' gomashtha, and that if he made the bricks it was probably for his master. He therefore decrees the case, and reverses the proceedings held under Act IV. of 1840, and awards plaintiffs' possession of the tank with price of the bricks, and he also directs the removal of the buildings placed upon the land, &c.

Gunganarain defendant appeals and objects to the order as unjust. He states that plaintiffs claim under a pottah said to have been given them by the Naiks in September 1843, but cannot produce it; that if it is admitted to have been given by Mahanund who was an infant at the time, and therefore even if produced could not be held valid; and that under the precedent given in the case decided in the Sudder Dewanny Adawlut on 5th July 1847 *Ram Suroop versus Sheik Imdadally* the suit cannot be entertained; that it is false that he (appellant) ever had it, and that in this case plaintiffs should first of all have sued to make him deliver the paper, and then have instituted this case; that plaintiffs have in no way proved possession, and though their witnesses are their own servants, still they differ in their statements, &c. He also questions the correctness of plaintiffs' books and papers, and of the items set down in them, and declares that they are not properly signed or authenticated. He objects altogether to the sudder ameen's surmises, and states that he placed bricks upon the lands before he got the pottah, as he considered the land (as in his talook) his Khas Khamar, and that he has fully established the pottah given for it; that the sudder ameen is wrong in having directed the removal of the buildings, as this was not considered in estimating the value of the suit.

Plaintiffs sue in this case to recover certain lands and a tank with some bricks, &c., out of which they state that the defendant Gunganarain, (formerly their gomashtha) has collusively ousted them, retaining the lease they had obtained for them. Defendant denies this, and states that the land is his, and is held under a pottah given him by the maliks, and that so far from being plaintiffs' ser-

vant, he and his brothers are sharers in several factories, and have many accounts, &c., with plaintiffs, and have letters, &c., of theirs by which they can prove this. Strange to say, however, he has not filed a single document, or given any proof whatever of this, and I must say after the most careful consideration of all the facts that I consider with the sudder ameen that he really was plaintiffs' servant (gomashta,) and that they (plaintiffs) have fully established their claim.

Defendant (appellant) lays great stress upon the fact of plaintiffs' being unable to produce their pottah, and cites a case (noted in his appeal) to show that without it his claim cannot be entertained. The precedent, however, in no way applies to this case, and it appears to me clearly proved both that defendant (appellant) was plaintiffs' gomashtha, and that whilst he was so, they got a pottah for the lands. It appears to have been given by two parties, one of whom (Mahanund) was under age; but as this was done when defendant (appellant) was the gomashtha and the manager of the whole thing, I do not see that he can fairly question the validity of the document on this account; and so far as regards the dispute between these parties, (neither Rammohun nor Mahanund has appealed) I cannot but hold it to have been valid and good.

With regard to that part of the order, directing the removal of the buildings, I do not consider appellant's objection valid. He took no notice of it in the earlier stages of the enquiry, and I do not see how he can be allowed to do so now; and as under all the facts of the case I see no cause to interfere with the orders passed in the lower court, I have confirmed them.

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THE 30TH APRIL 1851.

No. 35 of 1851.

*Appeal from the decision of Moulvee Abdool Uzeez, City Moonsiff of Bancoorah, dated 10th January 1851.*

Kessub Gossain, (Defendant,) Appellant,

*versus*

Gopeenath Dutt, (Plaintiff,) Respondent.

DEBT, rupees 46.

Plaintiff sued in this case to recover from defendant and his brother Mookund, as heirs of Ram Mohun Gossain, deceased, the sum of 23 rupees, with interest, due upon a bond, dated 9th Jyete 1248 B. S.

This case for some time proceeded *ex parte*, and proofs were filed and witnesses examined in support of the claim, when on the 31st December, Kessub defendant came in, stating that he and his brother had been absent in Calcutta and had only just returned, and



begging under the provisions of Construction No. 375, that they might be allowed to defend the suit; and upon this an order was passed that they should show cause why they had not appeared before, &c.

Upon this defendant produced two witnesses, who both spoke to the fact of their absence; but the moonsiff, after inspecting a notice (produced by plaintiff's vakeel) served in another case, and bearing upon its reverse a signature like to, and said to be defendant's, held that the plea of absence was *disproved*, and that he could not therefore allow them to defend the case, and accordingly he afterwards decreed it *ex parte* for plaintiff.

Kessub defendant appeals. He states that as soon as he heard of the institution of this suit, he came forward to defend it, and that absence alone prevented his doing so before; that under Construction No. 375, February 4th 1825, the moonsiff was bound to have heard his defence; that the serving of the notices, &c., has not been proved in the manner required under Section 22, Regulation XXIII. of 1814, that the bond is forged, and was never written by his father; that plaintiff is even now only nineteen years of age, and therefore must have been a child when it was written; that the writer is not even named; and that if it had been valid, the suit would have been brought during his father's lifetime, as he lived many years after the amount was overdue, &c.

I am obliged to remand this case, as it appears from an inspection of the proceedings held in it that the service of the process issued for the attendance of the defendants has not been established in the manner required in Clause 1, Section 22, Regulation XXIII. of 1814. This is fatal to the case in its present state, and I therefore decree the appeal, and, reversing the moonsiff's orders, remand the case for revision, &c.

The usual order for the return of stamp.

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## ZILLAH CHITTAGONG.

PRESENT: A. SCONCE, Esq., JUDGE.

THE 3RD APRIL 1851.

No. 459 of 1850.

*Appeal from the decree of the Sudder Moonsiff, Moulvee Nazeerooddeen,  
dated 3rd September 1850.*

Doorga Ram and Bance Ram, (Plaintiffs,) Appellants,

*versus*

Soburna and others, (Defendants,) Respondents.

IN this action plaintiffs seek two things: to get possession of a tank, and to have it declared not to belong to turuf Gholam Rahut Khan as shown in the measurement papers. They allow that the tank was held till 1207 by Ramdass; they say they are his nephews; and that in consequence of his widow Soburna and daughter Mohunee having lost caste from improper conduct ever since Ramdass' death, (he having no male heir) the tank was held by them till in 1211, they were dispossessed by Soburna.

The case comes before me in appeal upon the merits of the claim as above recited. The sudder moonsiff found that Soburna always held the tank subsequent to the death of her husband Ramdass; that as a widow she was by law entitled to hold the tank in succession to Ramdass; and that plaintiffs had shown no adequate grounds for the assertion made by them in aspersion of the character of Soburna and her daughter. I entirely agree with the sudder moonsiff. Plaintiffs (appellants) seem wantonly to have asserted that Soburna and Mohunee had lost caste, with no other purpose than to give a colour of justice to the claim preferred by them. They seem purposely to have abstained, putting this question to the witnesses, who were related to, or intimately acquainted with, the family. Two other witnesses, who speak to the loss of caste cannot tell why; and only one witness Ramchurn ascribes it to an irregular life.

For the rest, both the possession of Soburna and her right by law to inherit, must be considered clearly proved; not only is Soburna's possession proved by her witnesses, but even those of plaintiffs' witnesses, who speak to the point at all say that they held jointly with Soburna. Thus as the appellants' title to recover

the tank has failed, it is almost unnecessary to say that they have adduced no evidence to show that it does not belong to turruf Ghulam Rahut Khan. The appeal is rejected.

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THE 3RD APRIL 1851.

No. 22 of 1850.

*Original Suit.*

Mahomed Hashim Soudagur, (Plaintiff,) Appellant,

*versus*

Gouree Sunker Ghose, (Defendant,) Respondent.

BY a bond dated 29th Maugh 1202, plaintiff lent rupees 750 to the defendant: repayable, with interest, in Assar following: nothing being paid, plaintiff sues for principal and interest. Defendant does not appear; and as the loan and the execution of the bond are proved, the claim is decreed, with costs.

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THE 4TH APRIL '1851.

No. 462 of 1850.

*Appeal from the decree of Moulvee Ferhutoollah, Moonsiff of Bhojapore, dated 9th September 1850.*

Shamunt Alee, Wahid Alee and others, (Plaintiffs,) Appellants,

*versus*

Sunnoo and others, (Defendants,) Respondents.

THE plaintiffs, sons of Futteh Alee, asserting that their father and grandfather, as part of their talook, had held one-fourth of a tank named Ek-khooleah, in mouza Dhullege, and that with their father's assent the settlement of the talook, including this share of the tank, was renewed by two engagements with the zemindars on the 13th Assin 1204 in favor of Hyder Alee, Ghulam Alee, Wahid Alee and Kala Ghazee, sought by this action to have their right declared, to have their names recorded as joint occupants of the tank in the dagh 4558 of the revenue measurement: they say that this dagh is measured in the names of Munnoo, Sunnoo and Basir Mahomed only; and they wish to protect their own rights by a decree declaratory of their interests.

The moonsiff dismissed the case without entering into its merits. Seeing that the father of the plaintiffs is alive, and that the plaintiffs' personal interest in the talook did not arise till several years after the measurement was made, he held that the plaintiffs had no cause of action. Here the moonsiff obviously errs. The plaintiffs professedly sued as the representatives of their father; they intimated that their father resigned his talook to them, and that by his consent to themselves had renewed the settlement with the zemindar.

Clearly the plaintiffs are perfectly competent to set forth any plea which their father might have pleaded; and as *bond-fide* occupants (as they allege) of the fourth share of the tank they are entitled to protect their rights in any form that would have been available to their father. If the moonsiff had any doubt of the father resigning his interest in favor of his sons, this might have brought other matter under consideration; but as the case stands, this point is not under discussion.

I remand the case for investigation on the merits; before proceeding to judgment; the present moonsiff will be careful to distinguish the points at issue. The value of the appeal stamp will be repaid.

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THE 4TH APRIL 1851.

No. 484 of 1850.

*Appeal from the decree of Moulvee Ferhutoollah, Moonsiff of Bhajpore, dated 8th September 1850.*

Mooralee and others, (Plaintiffs,) Appellants,

*versus*

Ram Tunoo and Ramsoonder, (Defendants,) Respondents.

A TANK, comprising 11 k. 17-1, having been settled on the 27th November 1841, with Ram Huree, together with other land, as part of the turruf Fazil Ameer, which by purchase had become the property of Government. These plaintiffs (appellants) instituted this suit to recover possession of the tank, and to release it from Ram Huree's settlement, on the ground that it was their hereditary property, and that the land on which it was dug was not subject to pay rent and had always been unassessed.

Not discussing the merits of the case indeed before calling for any proofs from the parties, the moonsiff, considering that the claim made is against Construction No. 1371, dismisses the suit. The moonsiff could not have understood the meaning of Construction No. 1371: it refers only to the formal rules by which collectors engaged in making settlements under Regulation IX. of 1833, are guided, and it explains that though no civil suit shall be tried with reference to the informality of the collector's proceeding, a plaintiff's claim may and shall be tried on its merits.

Here the forms of Regulation IX. of 1833 are not at issue; it is a mere question of property. Plaintiffs claim the tank which was settled with another.

The suit must be remanded for a clear specification of the points at issue under Section 10, Regulation XXVI. of 1814, and if need be for a trial upon its merits.

I observe that there is reason to apprehend that the plaintiffs have rendered themselves liable to a nonsuit. The disputed tank

stands part of a Government estate; yet plaintiff seems to withdraw it from that estate, without making the proprietor, that is, Government, a party to the action. So far this appears to me to be the obvious purport of the plaint; but the moonsiff will draw this with other issues and consider whether or no a nonsuit is justly incurred. The value of the appeal stamp will be refunded.

THE 4TH APRIL 1851.

No. 466 of 1850.

*Appeal from the decree of Moulvee Ferhutoollah, Moonsiff of Bhojpore, dated 24th August 1850.*

Radha Ram Bindrabun, (Plaintiff,) Appellant,

*versus*

Lubunee, (Defendant,) Respondent.

THIS is the second suit that has been tried between these parties regarding the rent payable by Lubunee defendant, for the year 1208. On the first occasion Lubunee was plaintiff: Radharam and Bindrabun having distrained his property for an arrear of money rent as settled by kubooleut at the rate of 15 rupees a year, on account of 6 k. 10 g. of land; Lubunee instituted a suit against them to recover the value of the sold property and damages, on the ground that he held only 4 k. 15-3, and this on the understanding that he should pay half the produce as rent: the first suit was decided in favor of Lubunee on 16th March 1849. It was held that the kubooleut relied on by Radha Ram and Bindrabun was false, and in consideration of the illegal exaction which these parties had enforced, they were ordered to refund all that the sale of Lubunee's property had yielded and a corresponding amount as damages.

Now these plaintiffs (appellants) seeing that their claim to a money rent was disallowed, seek to recover a rent in kind for the same year; but I agree with the moonsiff that they cannot be heard. It was obviously the object of the issue of the old suit to close the case between the parties; and, if we are now to consider what rent the plaintiffs were entitled to, it would be equivalent to refusing the damages which have been already decreed. The illegal exaction of rent, is, in different forms, discountenanced by our laws. For example by Section 5, Regulation XXXV. of 1795, irregularity on the process of the sale of distrained property, subjects the distrainer not only to refund what by sale he may have received, but to forfeit the arrear for which the distress may have been levied. And again, by Clause 5, Section 15, Regulation VII. of 1799, even though it appear that some arrear should be due by the arrested defaulter, if the arrear demanded has been wilfully mis-stated by the plaintiff, and a considerable proportion of the demand is not justly due to him, the defendant shall be discharged, with full costs and damages. Obvi-

ously the same principle applies to the matter now before me. We cannot be asked now to pass any order which would tend to counteract the first decree: and I think the moonsiff has decided rightly in determining that the issue of the first suit deprives the appellants of any claim for the rent of 1208. The appeal is therefore rejected.

THE 5TH APRIL 1851.

No. 2 of 1851.

*Appeal from the decree of Baboo Punchanund Banerjea, dated 23rd December 1850.*

Ramchunder Dey, (Defendant,) Appellant,

*versus*

Asmut Alec, representative of Mahomed Jewun, (Plaintiff,) Respondent.

ON the 1st Maugh 1204, a bond for rupees 800 having been granted by Ramchunder Dey to Mahomed Jewun Moonshee, his son and representative Asmut Alee now sues to recover the principal and interest. Defendant (appellant's) answer is, that no cash was paid to him; that in fact on the same date he had mortgaged an estate of his, turruf Anundee Manoolah, to the sons of Mahomed Jewun; and that to guarantee the mortgagees against any claim which Ramchunder Dey might prefer to have a certain portion of the net profits of the estate, over and above the legal interest chargeable upon the cash advanced, deducted from the principal of the advance, he gave this bond to be made use of, should he (the defendant) so cause the mortgagees profitable interest in the estate to be diminished.

I must affirm the decree of the lower court. There is no want of witnesses on either side to prove the respective pleas of the parties, but I fully agree with the principal sudder ameen that the plaintiff's claim must be maintained.

First, we have the bond itself as plainly as words can be made to express an obligation: it purports the borrowing of rupees 800; it recites that interest shall be allowed on the loan, and that the principal shall be repaid within three months. This last condition alone is quite inconsistent with the excusatory plea of the defendant (appellant). By his account the mortgage ran for four years: not till the end of that time could the principal be repaid or an account taken of the receipts of the mortgagees; and yet he would have us believe that he, knowing the terms of the transaction, bound himself to pay within three months of the date of the bond, a sum which it was not intended he should pay at all. It is incredible that any man of common sense should so place himself in the power of another.

Further I observe that the mortgagees are said to be Asmut Alee and Mahomed Haneef; while the bond is drawn in the name of

Mahomed Jewun. Here the incredibility is deepened; for the fact of the bond making the debt payable to a party concerned in the mortgage, obviously points to the occurrence of an independent transaction.

There would be far greater danger to public justice in construing the meaning of a bond to be different from the plain expression of its language than in presuming, as I do now; that men will not prejudice their own interests by acknowledging in writing obligations which they did not intend to incur. Appellant shows through his witnesses that the annual profit of the mortgaged estate being rupees 530, and the legal interest due to the mortgagees being rupees 830, there remained rupees 200 per annum, which in the end might fall to be deducted from the principal. Thus to protect the mortgagees, he says, he gave a bond equivalent to the four years' surplus; but unable, as I admit myself to be, to appreciate the irreconcilable verbal testimony of the parties, I fall gladly upon the literal language of the bond.

The decree of the lower court is accordingly affirmed. Respondent appears without being summoned, and will pay his own costs of appeal.

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THE 8TH APRIL 1851.

No. 44 of 1850.

*Original Suit.*

Bindabun Tewaree, (Plaintiff,) Appellant,

*versus*

Musst. Bisesshuree, widow of Luckheechunder Canoongoe,  
(Defendant,) Respondent.

THIS suit is instituted to recover rupees 650 lent, and the same amount as interest. The claim is founded on two bonds, dated 24th Aughun 1201, one being for rupees 499, renewed on account of an old bond of the same amount; and the second for rupees 151, of which 101 was for the renewal of an old bond, and 50 rupees constituted a new cash payment. The terms of the bond themselves, and the witnesses of the plaintiff fully prove the nature and genuineness of the transaction; the defendant Bisesshuree does not appear, and a decree necessarily passes for the sum claimed, with costs.

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THE 17TH APRIL 1851.

No. 70 of 1850.

*Appeal from the decree of Moonsiff of Howlah, dated 12th January 1850.*

Jugdumba and Esanchunder, (Defendants,) Appellants,

*versus*

Anund Moy, (Plaintiff,) Respondent.

THIS is a suit by a Hindoo widow for maintenance, seeing that by reason of her husband dying before his father Hurdyal, she has no legal claim to inherit the property left by the latter. The moonsiff decreed in her favor one rupee monthly for her support and 1-8 annas for clothes, payable in the first instance by Jugdumba, her mother-in-law, and on her death by Esanchunder, nephew of Hurdyal.

It is mainly upon the question of the value of the property left by Hurdyal and as such enjoyed by the appellants; that the case comes before me. Upon the law of the case, the plaintiff's (respondent's) claim is undoubted; but as it would be obviously absurd to require the appellants to allow her more than they themselves derived from the property left by Hurdyal, or to allow her an unreasonable share of what they so derived, I have to consider what proof there is of the nature and extent of this inheritance; and, indeed, plaintiff's evidence is of too indefinite a kind to be relied upon; but for the admission made by Jugdumba that she holds 6 k. 10 g. of land, of which her own net profits are 4 rupees, I should be compelled to dismiss the action. I am not now to consider how they are to live, the two women, on a yearly surplus of rupees 4; but I have no evidence before me to show that plaintiff is entitled to a larger maintenance than consists of a portion of this sum. I allow accordingly Anund Moy, the plaintiff (respondent) 2 rupees yearly from the date of the institution of this suit, payable in the first instance by Jugdumba and afterwards by Esanchunder. Costs in both courts to be paid by parties respectively.

THE 17TH APRIL 1851.

No. 311 of 1850.

*Appeal from the decree of Moulvee Ferhutoollah, Moonsiff of Bhojpore, dated 11th June 1850.*

Dewan Alee, (Defendant,) Appellant,

*versus*

Moonshee and Buksh Alee, (Plaintiffs,) Respondents.

THE appellant, tahoodar of the proprietor of the turruf Brijkishore, kismut Probabutee, having, in execution of a summary decree for rent due by Moonshee and Buksh Alee as talookdars,



procured the sale of their talook under Act VIII. of 1835. This suit was instituted by the talookdars to quash the sale, on the plea that on the 2nd Chyte 1209, that is, nine days before the sale, they had paid the arrears due under the decree.

By the lower court the payment pleaded was found to be proved and the sale quashed; but the grounds of the moonsiff's judgment are objectionable. He goes mainly on an admission made by the defendant Dewan Alee, on oath; as if the plaintiffs had agreed to abide by it; but I observe that this proposal was made by one only of the plaintiffs, Buksh Alee, and that even the statement of Dewan Alee, as it stands, is against the alleged payments, for he expressly stated that he had not received the money.

I have had considerable difficulty in forming an opinion upon the averments and evidence before me; but upon the whole my conclusion is that the main averment of the plaint is inconsistent with the evidence adduced by the plaintiffs; that it is not proved, and that the plaintiffs consequently have made no case for quashing the sale.

The statement in the plaint is that the money due under the summary decree was paid, not to the decreeholder Dewan Alee in person, but through his tehsildar Illah Buksh. On the contrary plaintiffs' witnesses state that Dewan Alee in person received the money, and that Illah Buksh by his direction wrote the receipt. I can form no other inference from the statement in the plaint than that on account of Dewan Alee, and in his absence Illah Buksh, received the money and granted a receipt for the same: for I cannot conceive that if the alleged payment had occurred in the manner deposed by the witnesses, the plaintiff, in describing the transaction, would have employed words so entirely and so needlessly at variance with the fact. I might take exception also to the terms of the receipt. It is dated 2nd Chyte 1209: and after reciting the arrears for 1208, due by decree and interest, in all rupees 15-4, it is said from Pooniya (that is, the first instalment or earnest rent of the year) till now, in full received. This is superfluous as regards the decree, which was for a specific amount, and it may be conjectured that by these words plaintiffs sought to meet a second allegation of the plaint; that at the same time the rent for 1209 was paid. I am not now to try whether rent for 1209 was then paid or not; only I say that the witnesses do not speak to this additional payment, and that the unintelligible expression, which I have quoted, weakens the authenticity of the receipt.

Indirectly plaintiffs seem to impeach the validity of the sale by averring that it was informal. They say in the plaint that notice of the intended sale was not given to them; but personal notice is not by law necessary, and there is no reason to believe that the advertisements as required were not published in the collector's own office and in the civil court.

I accordingly reverse the decree of the lower court, and dismiss the suit. All costs will be charged to the plaintiffs.

THE 17TH APRIL 1851.

No. 312 of 1850.

*Appeal from the decree of Moulvee Ferhutoollah, Moonsiff of Bhojpore, dated 11th June 1850.*

Mahomed Kamil, (Defendant,) Appellant,

*versus*

Moonshee and others, (Plaintiffs,) Respondents.

I HAVE stated the matter at issue in this appeal, in disposing of the case brought before me by the appeal of Dewan Alee, No. 311. Mahomed Kamil holds the disputed talook, from the purchaser Becha Ghazee, to maintain the validity of the sale he appeals. The moonsiff's decree is already reversed; the plaintiffs will pay Mahomed Kamil's costs.

THE 19TH APRIL 1851.

No. 471 of 1850.

*Appeal from the decree of Moulvee Syud Ahmud, Moonsiff of Hatteeah, dated 5th September 1850.*

Mahomed Yosuf, (Plaintiff,) Appellant,

*versus*

Kanoo Nieyan and Mahomed Kassim, (Defendants,) Respondents.

HERE plaintiff (appellant) produces a bond, dated 25th Bhadoom 1254, in the name of the defendants, wherein it is recited that in return for a cash advance of rupees 40, they stipulate to deliver in Poods following 80 kunooahs of paddy to the plaintiff, and he sues now to recover the value of that paddy, rupees 64.

Kanoo (the defendant) denied the bond, and the moonsiff, believing it to be false and fabricated, dismissed the suit, upon its merits the case is appealed.

I cannot pretend to infallibly discriminate the utterly conflicting and necessarily false evidence before me. Plaintiff brings forward witnesses to prove the payment of the money; the execution of the bond, and the subsequent admission by the defendant of the obligation. Kanoo Nieyan on the other hand has his witnesses to show that he was elsewhere at the date of the bond; and that they were asked by the plaintiff to the witnesses to a bond, which he had ready written in the name of Kanoo, though the latter was not present. No less than six witnesses profess to have been tampered with by the plaintiff, three at one time, three at another. I could have wished the depositions of these men to have been written more in

detail, which would have enabled me to form a more satisfactory opinion as to the credibility of their statements; but taking their depositions as they stand, the proof of the *alibi*, and the meagre explanation given by the witnesses of the plaintiff as to the circumstances under which the loan had been applied for and was granted, I think I must affirm the decree of the lower court. It is shown that in 1849 (1256,) Kanoo and Buksh Alee, a brother of plaintiff, had in the revenue and criminal courts disputes about land, and though true enough as alleged by the appellant, this quarrel is of a date two years subsequent to the bond, it is perfectly conceivable that the quarrel may have led to the fabrication of an antedated deed. I affirm the moonsiff's decree.

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THE 22ND APRIL 1851.

No. 8 of 1850.

*Original suit.*

Khuteeja Beebee, (Plaintiff,) Appellant,

*versus* c

Doollub Beebee, Ramdass and others, (Defendants,) Respondents.

ON the 4th March last, the defendants failing to appear, I took up this case. Going through the plaint there appeared material objections to entertain the suit in its present form; and I recorded these objections and gave the plaintiff of laying any remarks before me she might think proper. Having again considered the matter, I think the plaintiff must be nonsuited.

On the 19th January 1849, by the judge a decree was passed in favor of Khuteeja Beebee, this plaintiff, for rupees 367-11-3-7, on account of her share of the property left by her deceased husband Mahomed Daim. The decree was passed against Doollub Beebee and Shumshere Alee; the total value of the property out of which this share was apportioned, was stated in the judge's decree, and again in this plaint to be rupees, 5883-4-6.

Now it happened that Doollub Beebee, also wife of Mahomed Daim, had applied for a certificate to collect her husband's debts under Act XX. of 1841. A certificate was granted, but she was required to give security; and accordingly under the terms of the Act Ramdass and Munsoor Alee became her sureties to the extent of 5000 rupees.

Upon the security given on that occasion, plaintiff founds this action. She avers that under the protection of the security bond Doollub Beebee was enabled to recover from the salt agent rupees 4723-4-9, and as her right to recover rupees 367-11-3 out of her husband's property has been affirmed, she seeks to associate the sureties in the liability to make good this sum.

It is manifest that plaintiff prefers a right to which Ramdass and Munsoor Alee cannot answer. The sum which she sues for (besides

interest) namely, rupees 367-11-3, is not stated to be money which Ramdass and Munsoor Alee as sureties, under the provisions of Act XX. of 1841, became answerable for. It is in fact Khuteeja Beebee's share of her husband's personal property; but that is quite a different matter from the debts collected by Doollub Beebee by her certificate. I may presume that since the whole personal property was valued at rupees 5883-4-6, and since it is stated that the debt paid by the salt agent to Doollub Beebee amounted to rupees 4723-4-9, some portion of the item rupees 367-11-3 represents Khuteeja Beebee's share of the money paid by the salt agent; but this, the very marrow of the present action, cannot be left to conjecture. Ramdass and Munsoor Alee are not answerable for the distribution of the deceased Mahomed Daim's estate; and upon that plea no suit can be against them: and if they be answerable for the monies paid to Doollub Beebee under the provisions of Act XX. of 1841, plaintiff is bound to particularize the item or items involved in her claim. As the matter stands, obviously the item which she does particularize, is in its very nature opposed to the particular cause of her action against the sureties.

For this reason I think the plaintiff must be nonsuited; and I add that it seems to be irregular, that plaintiff should a second time involve Doollub Beebee and Shumshere Alee as defendant in a suit for the very same matter, which the decree of 19th January 1849 determined with respect to them.

THE 23RD APRIL 1851.

No. 15 of 1850.

*Appeal from the decree of Pundit Sreenath, Principal Sudder Ameen, dated 27th August 1850.*

Rammohun Byd, (Plaintiff,) Appellant,

*versus*

Data Ram and others, (Defendants,) Respondents.

ON the 1st Bhadoon 1201, by pottah, Rammohun Byd let 6 k. 10 g. of land, principally consisting of a sooparee garden, to Bholanath, Data Ram and Terahee Ram. By reason of the death of Bholanath, the entire interest involved in the lease became vested in the two remaining sharers, and eventually in execution of a decree, the half interest held or supposed to be held by Data Ram was on the 10th December 1844 sold to Shurafutoollah. These are the leading points recited in the plaint of this action. And it is further the purposes of the plaintiff to assert and to prove that about ten months before the execution sale, that is, on the 24th Maugh 1205, Terahee Ram and Data Ram, by a written deed of relinquishment, threw up the lease; that the garden reverted to himself and was in

his possession; that Data Ram enjoyed no interest on the subject matter of the execution sale, and as the purchaser Shurafutoollah and Terahee Ram, in the months of Bhadoon and Kartick 1206, ousted him from the garden, he seeks to recover possession.

The only issue to be tried is, that which the defendants' denial of the relinquishment raises. The principal sudder ameen, Pundit Sreenath, disbelieved the evidence of the witnesses, who were adduced to prove the execution of the istefah; and though I am perfectly conscious how scrupulously the presiding officers of all courts should pronounce evidence to be false, which is made up of the successive testimony of several witnesses to one and the same fact. I think upon the whole that the principal sudder ameen has exercised a sound judgment in not accepting the genuineness of the statements made to him on this occasion. The principal sudder ameen thought that the reasons assigned by the witnesses for their being present while the contested istefah was written, were insufficient. One after another said, he had gone to Rammohun Byd for oil or ointment. Appellant says he is a physician and that naturally enough the parties came to him for physic. I have the same doubts with the principal sudder ameen, I see that the witness Okha Ram had gone for physic; so had Ramjye (whose wife ailed,) so did Ramdass and so did Mirtunjye. Another Ramkaunt said he had been to call, I may add that the evidence given to show that Rammohun occupied the garden bears the appearance of the same got up character. For example Banessur says he went to Terahee Ram to buy oranges, was told he had thrown up the garden and going on to Rammohun Byd, he bought twenty oranges from him.

But perhaps our disbelief of the istefah is to be more justified by the circumstances that the rights of Terahee Ram and Data Ram in the garden were saleable, and could be sold at a profit. Shurafutoollah bought Data Ram's half for rupees 26; yet the plaintiff (appellant) brings forward witnesses to prove that he accepted the istefah with reluctance, and pressed his tenants to retain the garden.

Perhaps also an additional doubt should be found in the delay that occurred on the part of the plaintiff (appellant,) when the execution against Data Ram was going forward. Execution of the land was taken on the 23rd July 1844; subsequently the usual 30 days' notice was published, but not till after this period had expired did Rammohun Byd state his objections to the attachment.

Finally I may notice an allegation of the plaintiff (appellant) that the legality of the execution sale is affected by the circumstances that ostensibly 3 k. 15 g. were sold as Data Ram's half, while his half is in fact only 3 k. 5 g; but here the obvious answer is that Shurafutoollah bought the rights and interests of Data Ram only, and that he himself claims no more than the net half of the garden, or 3 k. 5 g. Besides whatever plea Data Ram himself, or Terahee

Ram might prefer on this point; it is not clear upon what grounds plaintiff (appellant) can bring it within this action. I affirm the decree of the lower court, with costs.

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THE 24TH APRIL 1851.

No. 309 of 1850.

*Appeal from the decree of Moulvee Ferhutoollah, dated 15th June 1850.*

Esuf Alee, (Defendant,) Appellant,

*versus*

Mahomed Shuffee, (Plaintiff,) Respondent.

ON the 25th Jyte 1208, the plaintiff Mahomed Shuffee, for 3 k. 5 g. of land, received a ryotee pottah from Ayna Beebee and Poocheea Beebee, who granted the same in their capacity as talookdars, or under-tenants, of the resumed mehal talook Kasheenath Chukerbuttee and Moorareedhur Sen. In 1209 the resumed mehal was sold for arrears of revenue to Goluck Chunder Dass, shortly afterwards Goluck Chunder settled the above and other land with Esuf Alee, a relation of Ayna Beebee; now the plaintiff (respondent) sues to affirm his original pottah.

It appears that the suit is preferred on the presumption that the tenure of Ayna Beebee (Poocheea Beebee is now dead) is still in force. Plaintiff alleges that Esuf Alee on her behalf got the nominal settlement of the land; this is an assumption and nothing more. The plaintiff and indeed the moonsiff seemed to overlook the necessity of considering what was in fact the nature of the tenure of Poocheea Beebee and Ayna Beebee, and how was that tenure affected by the sale for arrears of rent. The defendant Esuf Alee averred that in reletting the land the new proprietor exercised the powers vested in him by the sale law: and accordingly before disposing of the appeals, I gave the respondent an opportunity of showing, if he chose to show what was the permanent nature of the talook from which his own ryotee tenure was denied: this he has failed to do. We have no reason whatever for assuming that the talook of Poocheea Beebee and Ayna Beebee is not open to re-assessment by the sale purchaser, and far less can it be assumed that a ryot created by them can enforce the validity of his pottah against the privileges of the zemindar of the estate. It was by the laches of the late zemindar, not by the laches of Poocheea Beebee and Ayna Beebee that the estate was sold, and such is the case made out by the plaintiff (respondent;) that even if Ayna Beebee had got the re-settlement of the talook in her own name, I should doubt if the respondent's pottah survived the sale.

I accordingly reverse the decree of the moonsiff, and dismiss the suit, with costs against the respondents.

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THE 24TH APRIL 1851.

No. 310 of 1850.

*Appeal from the decree of Moulvee Ferhutoollah, Moonsiff of Bhojpore.*  
 Esuf Alee, (Defendant,) Appellant,

versus

Fuzlooddeen and Alee Mahomed, Plaintiffs, and Mahomed Shuffee,  
 (Defendant,) Respondents.

THESE plaintiffs, Fuzlooddeen and Alee Mahomed, are the ryots of the land referred to in the appeal No. 309 just disposed of: they complain that they have been made to pay rent for 1209, both by Esuf Alee and by Mahomed Shuffee.

I have held that Esuf Alee's claim to the rent must be maintained for the period following the sale for arrears of revenue; the sale took place some time early in 1209. Esuf Alee claims rent for the whole year, his pottah by the new zemindar is dated in Aughun: I was about to require him to prove his title to the rent of 1209 from the commencement of that year, but to avoid delay, his vakeel foregoes rent for half the year. Under these circumstances the moonsiff's decree must be modified, Mahomed Shuffee will refund to the plaintiff rupees 3-8, costs included, and Esuf Alee rupees 2-4; in all 5-12: and costs of both courts in proportion.

THE 24TH APRIL 1851.

No 321 of 1850.

*Appeal from the decree of Baboo Satcowree Deb, dated 15th June 1850.*

Mahomed Danish and Asmut Alee, (Defendants,) Appellants,

versus

Shumshere Alee, (Plaintiff,) Respondent.

THIS case was instituted to recover rent on account of two small farms, which the defendants held beyond the period stipulated. Both farms were granted in the name of Asgur Moonshee, deceased, but he (plaintiff) stated, and his brothers Asmut Alee and Asgur Alee held the land, receiving the rent in advance, 2 kanees, plaintiff states, were leased from 1198 to 1201, being four years; and again 1 kanee 3-2, from 1199 to 1202, also four years; but defendants held the land up to 1205, and the arrears due in each case are claimed.

So far as the facts of possession go, the moonsiff found in favor of the plaintiff, and after a very careful consideration of the proceedings and indeed after permitting the appellants to offer any additional evidence they might think necessary, especially as regards the actual occupancy of the land during the years in dispute, I came to the conclusion that the moonsiff's decree must be affirmed.

Indeed it appeared that the second lease both in extent and period varied from that stated in the plaint; the pottah is not for 1 k. 3-2, but for 1 kanee; and ran not from 1199 to 1202, but from 1200 to 1203. Thus the moonsiff decreed 80 rupees, being four years of the first farm, and 20 rupees as two years arrears of the second farm.

In appeal, the appellants refer me to the evidence of Mahomed Khosal, Mahomed Ruffee and Mahomed Wasil as proving their case; they deny having held the land for the years just specified; and say on the contrary that it was held by Munghazee.

The witness Khosal says from 1202 he got from Munghazee 5 gundahs of the defendant's farm and held this for five years. Mahomed Ruffee says he rented from Munghazee 12 g., but when he rented it, he cannot tell. Mahomed Wasil says generally that the defendants held the land for three years after the revenue measurement: turning then from this imperfect evidence to the fact that the original leases are beyond dispute; considering that defendants have failed to show that they gave up the land from 1201 or 1203; and seeing the positive statements made by the plaintiff's witnesses as to the defendants continuing to hold the land till 1205, I am unable to find any grounds for the appeal preferred.

It is almost unnecessary to notice one plea made by the defendants in the lower court; that of the 2 kanees comprising the first farm, only 1 kanee was given over in 1198. The moonsiff justly remarks that it was incredible that a second lease would be taken from a party who had failed to complete his first engagement, besides no evidence is offered on this point.

Nor do I notice the grounds assigned by the plaintiffs for the arrear being so long unclaimed; namely, that it was understood between the parties that the profits for the excess period should go to cover a loan made to plaintiff and his father; and this debt being enforced in a separate suit, plaintiff's title to the assigned rent is renewed. I find nothing in the proceedings inconsistent with this statement, and above all, I find the defendants liable to pay rent for the period which it is proved they occupied the lands.

I affirm the decree of the lower court: the appellant must pay the respondent's costs.

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THE 25TH APRIL 1851.

No. 1 of 1851.

*Appeal from the decree of Pundit Sreenath, Principal Sudder Ameen,  
dated 13th December 1850.*

Gunga Dass and Kalee Chunder Sein, (Plaintiffs,) Appellants,

*versus*

Mahomed Daim and others, (Defendants,) Respondents.

THIS suit is instituted to recover possession of a noabad talook in mouza Kheel Kudoo, which, on the 5th July 1845, was ordered to be settled with Mahomed Daim Nazir.

The plaintiffs rest their preferable, title *partly* on the ground that the disputed talook represents, to some extent, their proprietary right in two shahee or eight muggy droons of lakhiraj land, which by an English officer is alleged to have been conferred on one Bancha Ram doctor, in the year 1777, or 1183 B. S.; and *partly* on their right to hold all new alluvion that by the gradual subsidence of a chur became annexed to the land allowed to Bancha Ram doctor. Plaintiffs state that in 1149 Muggy or 1787 A. D., Jansingh, son of Bancha Ram, sold the land of his father's grant to Rajbullub Canoongoe; that Rajbullub was succeeded by his sons, Bulbhudder Damoodur and Hurdial; that in the revenue measurement of 1183 Muggy the land was measured in their possession; that in the more recent revenue measurement of 1198, the land was found to amount to d. 11-2-17-3; and that this land was ordered to be settled with Hurdial, Bulbhudder and Damoodur. Further plaintiffs show Bulbhudder's 5 annas share was in execution of a decree sold to Bydnath Chowdree; that Bydnath sold his interest to Kalee Chunder and Kalee Dass Sein, and that Kalee Dass resigned his interest to his brother Gunga Dass. Further it is shown that the chur continued to increase; that in 1205, or 1843, it extended to d. 23-5-2-3; and that of this land d. 6-5-10 were settled with Mahomed Daim, of which they claim a 5 annas share.

Mahomed Daim, in answer, relies in part upon the grounds upon which the land was assigned to him by the settlement officer, namely, on the fact that it adjoins the land of his taruf Brigo Ram, and lakhiraj land Basoodeb; also on the alleged fact that it is a mere equivalent for what he lost by diluvion, and that Government as proprietor of noabad land, is competent to assign the settlement of it to whom it pleases.

Again, in appeal, the plaintiffs press similar pleas upon my attention: they aver that the land falls within the bounds of the sunnud of 1777; that it corresponds with the daghs of the revenue chittahs of 1183; that Mahomed Daim claimed the land as an

accretion, corresponding with his diluvion, not because it became annexed to his other property, and that the defendant himself in the lower court admitted he had no title to the land sued for, if it could be found to correspond with the daghs of 1180.

The disputed chur lies in a south-west and north-east direction, on the banks of the river Kurunfolee, but bulging it appears somewhat outwards. It is intersected by several small streams running from the main land into the Kurunfolee. By the last measurement as already intimated, the whole chur extended to over d. 23, in the middle lies the d. 6-5-10, sued for in this plaint, and on the easterly and westerly extremities of this patch, lies the remainder in two portions of seven or eight droons each, and of these the plaintiffs already hold their share.

First, I remark that though the plaintiffs trace their title to an alleged lakhiraj sunnud; neither the validity of the sunnud nor the liability of the land to pay noabad rent is at issue. The sunnud is assumed to constitute a proprietary right in the land; and so far whatever that right might be, it is not disputed by the defendant. There seems no reason to doubt that a gift of 2 shahee, or 8 Muggy droons, was made over in 1183 Muggy to Bancha Ram; but it is of more consequence to remark that in what manner the gift was carried into effect, to what extent and in what manner Bancha Ram made his appropriation, we have no specific evidence.

The earliest tangible evidence relative to the land held by Bancha Ram is the chittahs of the public measurement of 1183. In speaking of this measurement I speak of a record which is not unexceptionable. On the very face of the copy of the chittas supplied, it is noted by the collector that their authenticity is not vouched for. The measurement and settlement operations of that period continued incomplete, still with this reservation, I observe, that from these chittas the plaintiffs (appellants) show that at that time daghs running from 1 to 27, and measuring Muggy droons 2-5-12-1 were recorded as the khyrat of Bancha Ram doctor, in the possession of Hurdyal, Bulbhudder and Damoodur; and that other daghs running from Nos. 28 to 42 were recorded in the possession of the same parties as "khass seivae dagh" land; of these last daghs appellants have stated that daghs 30 to 34, making about 9 kanees 6 g., represent the original land for which they now sue. I have said 30 to 34, but No. 31 is missing, and in what mode this dagh was distributed we have no distinct evidence.

Thus then it will be understood that the appellants declare the defendant's noabad talook to represent the daghs 30, 32, 33 and 34, but not wholly so. The talook sued for is ten times as much as these daghs measured in 1183; and this large excess they claim as alluvion.

But this does not state the entire case. The land so measured in 1183, was a few years later entirely washed away: from about

1186 diluvion began, and went on to 1197 or 1198. How much land was destroyed in each year is not stated by the witnesses; but the general inference to be drawn from their evidence is that for some years the river ran over the spot where the daghs of 1183 fell. About 1198 or 1199 new land began to form, and by the last survey, as already said, the chur measured above 23 droons.

Now, it is clear that the plaintiffs (appellants) attempt to identify the new land is out of the question. The land of 1205 is not the land of 1183. It is not the same. In 1183, in the description of the daghs 30, 32, and 34, three nullahs are mentioned: there is Nowakhalee, Fooleakhalee and Sona Manjee's Khalee; but it is impossible to trace these nullahs in the streams which the chur shows now, there may be corresponding stream now; but necessarily the figure of the chur, as has its extent, in any indefinite degree, altered.

My first difficulty is to find that the possession by Hurdial, Bulbhudder and Damoodur, of somewhat more than 9 kanees in 1183, taken in connection with the fact that their possession was interrupted by the diluvion of the land at any time between 1186 and 1198, entitles the plaintiffs to a 5 annas share of the defendant's talook with the land, the right vested in the land, was lost. We have now a new soil, with which have arisen new interests, excepting the interval of a footpath it forms part and parcel of the defendant's property. So near and so complete is the annexation to his estates, that with reference to common custom and the special provision of Regulation XI. of 1825, I am unable to throw over his title in comparison with the superseded and very limited right exhibited by the plaintiffs.

But further I am unable geographically to connect the daghs 30 to 34 with the line of the chur which borders defendant's original land. In 1183 daghs 1 to 27 for droons 2-5, represented Bancha Ram's land, this is assumed to be situated in the easterly portion of the chur; and in lieu thereof, plaintiffs and their co-sharers have received now about  $7\frac{1}{2}$  droons. From dagh No. 28, at the measurement of 1183, a new start was taken. Leaving the 27 daghs at a considerable distance "buhoo bunddoor," (as is written in the chitta) the re-measurement began and went on towards the west. In none of the daghs 30 to 34 is the main land referred to as a boundary: it is not said any where that they adjoin the turruf Birgo Ram, or the lakhiraj Basoodeb, as the disputed land now does. I know not at what interval the measurement may have occurred, nor can I say that the measurement of these daghs did not run to the westward, and a part from the estates now held by the defendant, and besides, the most important difference between 6 droons and 9 kanees (which was the alleged original of the present claim.) Still more baffles our attempt to mark off, as it were, the position of the daghs 30 to 34 on the defendant's talook.

In the sunnud of 1777, the land granted is described as lying (in part) north of Ramsunker Canoongoe's surhud or boundary. Possibly this refers to the turruf Brigo Ram, which was that Canoongoe's family estate. So from the eastern boundary given in the sunnud, Tek Churkandee, as well as from the western point given as Chunderea nalah (the position of neither of which points is denied) there would appear to have been an intention of assigning the 8 droons somewhere between; but the exact nature of the ostensible right created by the sunnud is a very different matter from the question now before me, which is, whether I am to deny the legal right which unquestionably centres in the defendant. The new chur land, at least that portion which is now disputed, is an accession to Mahomed Daim's estates. He is entitled by law to acquire the settlement of land so situated, and obviously his claim can only be postponed, if it can be postponed at all, to a prior and superior title. In itself defendant's title is certain and determinate; appellant's title on the other hand is uncertain and indeterminate, and what is more, from the diluvion of the old chur, appellant's title to the new disputed talook has ceased to survive.

I accordingly affirm the decree of the lower court; appellants will pay the respondent's costs.

THE 26TH APRIL 1851.

No. 6 of 1850.

*Appeal from the decree of Moulvee Nazeerooddeen, Sudder Ameen, dated 26th February 1850.*

Maharajdeen Tewaree, (Plaintiff,) Appellant.

THIS suit having been decided by razeenamah after the pleadings were completed, the sudder ameen allowed a refund of half the value of the plaintiff's stamp. Appellant claims the full value, but the order of the sudder ameen is perfectly conformable to the law. The pleadings must be held to have been completed, and the case to have been ready for hearing: and accordingly only half of the stamp duty can be repaid.

It is true that no rejoinder was filed by the defendants to the plaintiff's reply; but this was not imperative, the plaintiff's reply was filed on the 31st December 1850: if the defendant meant to rejoin, his pleading should have been filed on the same day; but he did nothing, and on the 20th February the razeenamah was filed.

Under these circumstances the appeal must be rejected.

THE 29TH APRIL 1851.

No. 322 of 1850.

*Appeal from the decree of Moulvee Ferhutoolah, Moonsiff of Bhojpore.*  
 Rubedass, (Defendant,) Appellant,

versus

Rajbullub and Gungadass, (Plaintiffs,) Respondents.

THE plaintiffs professed to have bought 4 k. 14 g. of land in mouza Joozkola from Musst. Chunderkola on the 25th Phagoon 1209, and they sued to get possession of the land and arrears of rent due. Rubedass answered that on the 23rd Chyte 1205, Musst. Chunderkola had already sold the land to him.

The moonsiff dismissed the suit, because Chunderkola being a Hindoo widow, with a minor daughter, was not competent to sell the land sued for, and to that order the plaintiffs assent, having made no appeal; but for the same reason the moonsiff at the same time quashed the kubalah held by the defendant Rubedoss. This is obviously irregular, it was enough to find that the plaintiff had no valid claim. What is the validity of the defendant's (appellant's) kubalah, must be reversed till the question can be competently tried.\* So much of the moonsiff's order as annuls the kubalah of Rubedass I reverse; plaintiffs will pay the appellant's costs.

THE 29TH APRIL 1851.

No. 470 of 1850.

*Appeal from the decree of the Moonsiff of Hathazaree, Moulvee Abool Hossein, dated 29th August 1850.*

Mookir Alee and Noorbuksh, (Defendants,) Appellants,

versus

Rammohun Deo, (Plaintiff,) Respondent.

THIS suit was instituted by Rammohun Deo, proprietor of turruf Khemanund, to recover arrears of rent (for the four years 1207 to 1210) due on account of a talook settled by the defendant in 1207. Plaintiff stated the talook to contain 5 kanees, and to consist of the following daghs of the last revenue measurement: viz. Nos. 6457, 6458, 6459, 6460, 6461, 6462 and 6463.

Defendants answered that the talook was an old talook containing 4 k. 16 g., and they stated the daghs to be as follows: viz. 6458, 6459, 6460, 6461, 6465, 6516, 6517, 6518 and 6519. Further they said that the daghs 6457, 6462 and 6463, quoted by the plaintiff, belonged to another talook named Sooltan, and that it formed part of the turruf Mahomed Mufzul.

This very important difference relative to the land, for which the claim is made, the moonsiff has not investigated at all. Plaintiff

expressly sued to recover rent (for example) of the daghs 6457, 6462 and 6463, calling this land daghs of the turuf Khemanund, while the defendant answered that these three daghs belonged to a turruf not held by the plaintiff. Thus it may happen that the moon-siff, who has entertained only the question of the arrears being due or not due, has decreed rent for land to which the plaintiff has no just title.

The suit must accordingly be remanded for re-investigation with reference to these remarks. The value of the appeal stamp will be repaid.

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**PRESENT: S. BOWRING, Esq., OFFICIATING ADDITIONAL JUDGE.**

**THE 7TH APRIL 1851.**

**No. 414 of 1850.**

*Regular Appeal from the decision of Moulvee Syed Ahmed, Additional Moonsiff of Deegang, dated 13th June 1850.*

**Ramsoonder Sen, (Defendant,) Appellant,**

*versus*

**Casheenath Thakoor and others, (Respondents.)**

SUIT instituted 1st November 1848, for possession of a share of 5 kanees land, being two tanks and a house in Beeturbaree, total g. 16-2-2 purchased, and cancellation of magistrate's order, and of the settlement with the ijaradar 63-11-4.

The plaintiffs stated that on the 16th Sawun 1253 Kooloochunder sold his share, being one-third in nowabad land and tanks to plaintiffs, which plaintiffs again let to Hyder Ali as ryot; that Kooloochunder and another shareholder being dead, their heirs and other partners with Ramsoonder have ejected plaintiffs, and that a settlement was subsequently made by the farmer with Ramsoonder; that the dagh 429 was never the property of Kooloochunder but of the fathers of Boistubchurn and another plaintiff; that plaintiffs complained to the magistrate; but the case was given against them, and again on the civil court, but withdrew the case in consequence of not having given sufficient particulars.

The defendant Ramsoonder replied that the magistrate's order being summary should have been appealed within one year; that the land is worth 150 or 200 rupees, being a garden; that plaintiffs never offered to settle; and that they now claim a third share and wish to upset the settlement of the whole; that defendant bought the whole from the shareholders on the 21st Poos 1208, and settled with the farmer in the name of Mohundass on the 26th Maugh 1253; that plaintiffs are some Bramins and some Soodrus, not men likely to purchase a tank in partnership; that in the foudaree two men claimed dagh 437, and now five.

Goopeenath and other defendants and heirs of deceased shareholders, said they had sold the land to Ramsoonder.

The plaintiff rejoined that the widows, heirs of shareholders, had no power to sell, and that the benamee settlement could not stand.

Nittanund defendant on his own petition, stated that Kooloochunder was sole owner of the tenure, though measured as the property of him and others.

Petumber Sen, also defendant, on his own petition, claimed one-half of the land.

The moonsiff considered that the ejectment of plaintiffs from g. 16-2-2 had been proved, also the settlement of dagh 429, included in dagh 438, and that plaintiffs had purchased the rights of Kooloochunder in daghs 144, 428, 437 and 438. He refused to annul the proceedings of the magistrate as no copy had been filed, but disallowed the sale to Ramsoonder on account of the previous sale by Kooloochunder, and decreed for plaintiffs.

The defendant Ramsoonder Sen appealed, pointing out discrepancies in the testimony of the witnesses to the kuballa filed by plaintiff, also in the evidence in the civil court, and before the magistrate, and stating that the kubooleut signed by Hyder Ali is fictitious.

### JUDGMENT.

It is not very clear to me under what title the plaintiffs claim the different daghs, nor can I ascertain it from their vakeel. A part, especially dagh 429, is said to be the hereditary property of some of the plaintiffs; but it does not follow that because it is so they are entitled to settle with Government for it. Other land is claimed as purchased from Kooloochunder, but this kuballa is not supported by very satisfactory evidence. The plaintiffs say in their plaint, that the kuballa is dated 16th Sawun 1253, the writer says 2nd Sawun, and the real date is the 26th. The stamp was bought on 26th July 1846, and the stamp for the receipt on 27th February 1845. Several of their witnesses are connected with them, and they have taken the very unusual precaution of causing witnesses to sign a chalan. The statement of the defendant that the present plaintiffs are not the same parties who complained in the foudjaree has not been met, and from the plaintiffs' having made a complaint there at all, so shortly after the death of Kooloochunder, the inference is inevitable; that they did not obtain possession under their kuballa. They have not shown that Kooloochunder had any right to settle or if he had, and they derive a right through him why the whole settlement should be reversed, because he had a third share.

The moonsiff has given the plaintiffs possession, which the magistrate refused to do, but says he will not reverse the order which has not been filed, though virtually he does annul it.

The kuballa held by Ramsoonder Sen, defendant, is objected to, on the ground that it is signed by widows of deceased shareholders; but as it is distinctly stated, that the land is sold to enable them to pay their husband's debts, the sale may be good. It is, moreover, for the whole tenure not for a part as plaintiffs claim.

The defendant Ramsoonder being employed in the collectorate, suspicion attaches to a settlement made by him benamee, but the plaint is too vague, and not sufficiently proved, to allow me to confirm the moonsiff's order.



I annul the decree of the lower court, and nonsuit the plaintiffs who will pay all costs in both courts.

THE 7TH APRIL 1851.

No. 658 of 1850.

*Regular Appeal from the decision of Moulvee Syed Ahmed, Moonsiff of Satkanneeah, dated 25th November 1850.*

Kooloochunder Gokul and Odoychand, (Plaintiffs,) Appellants,

*versus*

Chooramunnee and others, (Defendants,) Respondents.

SUIT instituted 26th June 1848, to correct the chittas of 2-17 k. 3 c. of land, lakhiraj, and possession of 3 g. 3 c., with wasilaut and survey charges, rupees 111-6.

The plaintiffs stated that they hold a rent-free tenure called Maghun and Bulram, in mouza Khoordkeonshe, measured in the late survey as daghs 6872, 6873 and 7019; but that defendants had caused the chittas to be altered, and instead of 6872 and 6873, 7009 and 7083, to be recorded as plaintiffs' land. Plaintiffs applied to the collector, but without result, but they still retain possession of k. 2-14, which are not in the zemindaree of Tez Singh Hazare, as stated by defendants. They also claim rupees 12, survey expenses paid to defendants.

The defendant Chooramunnee replied that the land formed part of her talook of which plaintiffs have given a kubooleut, on which she had sued for rent in another case.

Anund Nurayen Ghose, the zemindar, also replied that the land was in defendants' talook.

The moonsiff observed that plaintiffs had not sufficiently identified the land nor had they sued for correction of the daghs 6988 and 6989, and that it was not clear on account of what daghs rupees 12 had been paid. He dismissed the suit.

The plaintiffs appealed, asserting they had proved their case.

#### JUDGMENT.

The plaintiffs claiming land as lakhiraj, a report was called for from the collector, from which it appears that plaintiffs own daghs 7009, 7019 and 7083, as lakhiraj. It has not been shown that defendants have encroached on these daghs; but, on the contrary, that plaintiffs claim land in excess of what they now hold rent-free. This court is not competent to transfer land from the turruf to a rent-free tenure after the boundaries have been defined by the revenue authorities. The 12 rupees paid by plaintiffs appear to have been, according to the evidence of plaintiffs' witnesses, given an inducement to file a kubool-jowab, but there is no written agreement whatever. I cannot decree this sum as given for survey

charges, even were the payment fully proved. I dismiss the appeal.

THE 8TH APRIL 1851.

No. 536 of 1850.

*Regular Appeal from the decision of Mr. L. W. Hutchinson, Moonsiff of Putteeah, dated 15th August 1850.*

Shumud Ali, Oomed Ali and others, (Defendants,) Appellants,

*versus*

Motecoollah, Sadej Ali and others, (Plaintiffs,) and Kassim Ali, (Defendant,) Respondents.

SUIT instituted 10th November 1849, for possession of 7 k., 11 g. 1 c. of hasila land, with mesne profits, and to deduct the same from a fictitious kuballa, rupees 140-8-1.

The plaintiffs stated that they, with their brother Kassim Ali, defendant, inherited a share in a talook of d. 2-2-14, in mouza Hussun Dundeen, turruf Mungutram Hazaree; that plaintiffs' father dying while they were minors: about sixteen years ago Kassim, the eldest brother, managed the whole share k. 8-13-2, being one-half of d. 1-1-7, and at the survey it was measured as his and Shamud Ali, (the defendant's) ijmalee, and settled at 42 rupees jumma for the whole d. 1-1-7. Kassim Ali, however, in 1199 M. S., sold the whole share as 9 kanees to the defendants, his cousins, owners of the other half of d. 1-1-7. Plaintiffs came of age at various dates between 1202 and 1209; one, however, being still a minor, and now sue to reverse the sale by Kassim Ali, except as regards his own share k. 1-8-3, and to cancel so much of the kuballa as transfers to defendants' (plaintiffs') rights, in k. 7-11-1, the remaining portion of 8-13-2, inherited with Kassim Ali. They also claim wasilat 56-14-1, after deducting the jumma paid.

Kassim Ali defendant replied that he did not sell; but only mortgaged the land, and afterwards offered to redeem it.

The defendants, Shamut Ali and others, admitted having inherited the land as partners with Kassim Ali in equal share, and that it was measured as stated by plaintiffs; but they asserted that the entire estate having been bought by Government at a sale for arrears of revenue, all absolute right to the talook terminated. Plaintiffs not applying for settlement, the Government gave the talook to defendant and Kassim Ali, when the latter sold his share to defendants. The plaintiffs were not minors at the time as asserted.

The moonsiff observed that both plaintiffs and defendants were grand-children of Yar Mahomed, from whom they derived their title, and Kassim could not sell more than his own share. He considered that the land had however been mortgaged, not sold, as the

price was inadequate, and one of the witnesses spoke to the mortgage. He considered the deed not binding on plaintiffs who were minors at the time, and decreed for them, giving wasilat at 1-12 per kanees.

The defendants appealed, repeating their defence, complaining of the wasilat allowed, and denying that the price of the land was inadequate.

#### JUDGMENT.

The talook was originally owned by Yar Mahomed, whose grandchildren the plaintiffs and defendants, inherited d. 1-1-7 as their share. All right derived by descent terminated however, with the sale of the turruf for arrears of revenue and its purchase by Government. The revenue authorities renewed the "sabij talook" to Shamud Ali and Kassim Ali, and excepting their descent from Yar Mahomed and long possession, these parties had no claim on the Government. The issue is whether the brothers of those named in the Government grant of the talook are to be admitted to share in the tenure. The brothers of Shamud Ali took theirs, and the rights of plaintiffs rest on precisely similar grounds; they have, perhaps a better claim as being minors at the time as has been clearly shown, the Government could make the settlement with the elder brother only. If not in law, their claim seems good in equity, and I do not therefore allow that Kassim Ali alone had the right to sell the tenure. The defendants appear to have been aware of this from the inadequate price paid by them: they gave 8 rupees for 9 kanees, worth 1-12 each annually, certainly less than the value. It is probable also that though the deed is one of absolute sale, it was really intended as a mortgage only; this being the usual mode of evading the usury laws, I therefore concur with the moonsiff, and confirm so much of his order as declares the sale by Kassim Ali, of any but his own share, invalid; but as no reason has been assigned for the delay of so many years in bringing this suit, I cannot allow the wasilat; I decree possession of the land to the plaintiffs, as shareholders, and costs in proportion to the amount awarded.

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THE 8TH APRIL 1851.

No. 546 of 1850.

*Regular Appeal from the decision of Moulvee Syed Jonab Ali, Moonsiff of Sathkanneeah, dated 19th August 1850.*

Moulvee Gholam Ali, Hyder Ali, and Mobarik Ali,  
(Defendants,) Appellants,

*versus*

Meeah Jan, (Plaintiff,) Roshun Ali and others, (Defendants,) Respondents.

SUIT instituted 31st July 1849, for possession of d. 3-10-15-1 of land, with wasilat, rupees 264-10.

The plaintiff stated that at a sale by order of the court, on the 4th July 1848, he bought the above land, the property of Roshun Ali; that having called on the ryots to engage for their lands, he found they still paid to Roshun Ali and his brothers, who still retain possession, and the zemindar refuses to receive rent from plaintiff, who now sues.

Gholam Ali and other defendants, brothers to Roshun Ali, replied that this person had only a fourth share in the tenure, which had been inherited in equal shares by the four brothers from their father.

Mahomed Nukkee and other kishtkars gave the same reply.

The moonsiff considered it had been shown that the four brothers had inherited equally, and that plaintiff having brought Roshun Ali's share, had acquired a fourth only in the tenure. He decreed for plaintiff, giving costs and interest against Gholam Ali and others.

Gholam Ali and the two other brothers appealed, objecting to payment of costs and wasilat, and to full costs having been given, though the amount claimed had not been decreed, and objecting to the description of the land by the moonsiff.

The plaintiff on the 3rd April only petitioned that the whole case might be reviewed under Construction No. 868, and objected to the stamp on which appellants had preferred the appeal.

#### JUDGMENT.

The moonsiff has, by an oversight, held Roshun Ali liable for the principal and the other defendants for the costs and mesne profits, while giving the decree really in their favor Roshun Ali will be liable for all. The complaint regarding the description seems to have been abandoned by the vakeel for the appellants. If the respondent had appeared within a reasonable time the whole judgment might have been reviewed; but he petitioned forty-one days after the appeal had been admitted.

I modify the moonsiff's order, giving cost against any other defendant than Roshun Ali, who will pay all costs in proportion to the amount awarded, and the mesne profits on the land.

The appellants having applied for their costs from the respondent, on the ground they were unjustly made defendants, I disallow the claim, considering that the case shows that without their assistance Roshun Ali could not have retained possession contrary to the court's order passed on the sale.

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THE 8TH APRIL 1851.

No. 591 of 1850.

*Regular Appeal from the decision of Moonshee Mahomed Akbur, Moonsiff of Rawoojan, dated 21st August 1850.*

Ram Hurry, (Plaintiff,) Appellant,

*versus*

Jeebun Kishen Rae and others, (Defendants,) Respondents.

SUIT instituted 23rd August 1849, to cancel a sale and restore to plaintiff a talook of d. 10-13-8-3, in shikeemee turruf, rupees 300.

The plaintiff stated that he held in talook the above land, and falling into arrear for 1209, was sued by the zemindar, and cast for rupees 113-15, with costs and interest; that he arranged to pay by kists, but the zemindars, concealing this, caused the tenure to be sold, when it was bought by Becharam for 7 rupees.

The zemindars (defendants) denied that they ever agreed to receive payment by kists. • •

Becharam objected to the stamp on which the suit was brought, and to the kistbundee not being more particularly specified.

The moonsiff observed that the tenure had been sold for arrears, and plaintiff though called on had adduced no proof of his plaint. He dismissed the suit.

The plaintiff appealed, on the ground that the moonsiff held his roobukaree under Act XV. of 1850, on the 26th July, and dismissed the suit on the 21st August contrary to Act XXIX. of 1841.

#### JUDGMENT.

The moonsiff has dismissed the case contrary to Section 1, Act XXIX. of 1841. It is therefore restored to the file.

Value of stamp to be returned.

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THE 9TH APRIL 1851.

No. 553 of 1850.

*Regular Appeal from the decision of Syud Jonab Ali, Moonsiff of Suthanneeah, dated 16th August 1850.*

Abdool Baree, (Defendant,) Appellant,

*versus*

Meeah Jan and others, (Plaintiffs,) Respondents.

SUIT instituted 5th April 1849, to separate k. 1-18-2, from the jumma-bundee of Abdool Baree, and expunge his name from the survey chittas of k. 1-18-2, and record the names of plaintiffs, and settlement, rupees 15-14-17g.

The plaintiffs stated that they inherited the above land, which had been given many years ago by Kassim Chowdry to his daughter as kunyadan, and that it is not included in the land of Ruhjoom Abas, the owners of which have no right to rent; that by present survey the defendant's name having been recorded as owner and settlement made with him, and plaintiff's objections not attended to, they now sue.

Abdool Rohoman defendant, on his own petition, denied any right in plaintiffs to the land.

Bakur defendant corroborated plaintiff's statement.

Abdool Baree did not appear.

The moonsiff decided the case *ex parte*, and observed that the claim was not contested by Abdool Baree, who had not sued plaintiffs for rent, and possession being proved, he decreed for plaintiffs.

Abdool Baree appealed stating that when the suit was instituted he was in Calcutta, and was never informed of it; that Petan is his gomashita, not Nuzrut Ali, as stated by plaintiffs.

#### JUDGMENT.

When the appeal was admitted respondent were called on to show that Nuzrut Ali, as stated by them, was Abdool Baree's agent, they have failed to do this, but independent of this material point, there is not sufficient proof to adjudge the case, which was brought two days only before the expiration of twelve years. The only proof is two or three witnesses, quite insufficient to warrant alteration, is a survey of so long standing when the delay in bringing the suit is not satisfactorily accounted for.

I decree the case to the appellant, with all costs in both courts.

THE 9TH APRIL 1851.

No. 593 of 1850.

*Regular Appeal from the decision of Moonshee Mahomed Akbur, Moonsiff of Ramgojan, dated 18th September 1850.*

Fuzl Ali Chowdhry, Hydher Ali, and Rohmut Ali, (Plaintiffs,  
Appellants,

*versus*

Hudoo Chowdhry and others, (Defendants.) Respondents.

SUIT instituted 22nd January 1850, to open a road from north to south  $1\frac{1}{2}$  bans broad and 38 bans long, 3 g. land, rupees 3.

The plaintiffs stated, that there are two roads in mowza Guhna, one near the defendant's house, leading to a tank, which road in Assar 1211, the defendants closed by a fence.

The plaintiffs complained to the magistrate, but the road having been closed more than a month without result, and plaintiffs were told to use a door in the fence, this door has since been closed, and a house is now built on the road.

Mahomed Ali defendant admitted the truth of the statement.

Mahomed Hadoo denied there was any road or any mention of one in the survey chitta. A ditch runs across the spot where the road is said to be: the suit is malicious.

The moonsiff observed that the road described is through defendant's baree; that plaintiffs have proved no right, and that no road could be open without great inconvenience to defendant Mahomed Hadoo, he dismissed the suit.

The plaintiffs appealed, repeating their plaint.

#### JUDGMENT.

The plaintiffs' witnesses call the road "Koopee," equivalent to private, and admit that it runs through the defendant's premises, and could not be open to all persons without great discomfort to the defendant. The whole evidence shows the road to have used by his permission, and the only point, which would have shown as public right of way, viz., whether it existed before the house was built by the defendant, was not enquired into. The evidence not being sufficient, I dismiss the appeal.

THE 9TH APRIL 1851.

Nb. 594 of 1850.

*Regular Appeal from the decision of Moonsiff Abdool Jabbur, Moonsiff of Jessore, dated 24th August, 1850.*

Jan Ali Chowdhry, (Plaintiff,) Appellant,

*versus*

Hossein Ali and P. C. Reid, (Defendants,) Respondents.

SUIT instituted 18th February 1850, to recover 20 rupees cash, and property illegally distrained.

The plaintiff stated that he held no land under the defendant Reid in turruf Teeta Tewares, notwithstanding which both defendants attached his property for rupees 14-10, alleged to be due for 1209, and sold it through the sale commissioner for 8 rupees. Kaleedas, who also distrained, will be sued separately.

He (plaintiff) sued before, but the case was struck off the file on the 5th February 1850.

Mr. Reid (defendant) said that plaintiff and his father previously had long held 4  $\frac{1}{2}$  17-2, in his zemindaree. Defendant distrained on default of plaintiff to pay.

The moonsiff observed that plaintiff had not sued within one year, and dismissed the suit.

The plaintiff appealed, observing that defendant had given no proof, and that the moonsiff had not quoted the Regulation under which he acted.

#### JUDGMENT.

The property of the plaintiff was attached and sold for arrears of rent, and the object of his vakeel was to show that no special law of limitation applied to the case. He quoted Section 6, Regulation VIII of 1831, and asserted that there being no order of the collector in the case, it came under Regulation III. of 1793.

The zemindar attached the property, it is alleged illegally, and where one year is everywhere in the Regulations allowed as the period during which redress may be obtained for such an act, I cannot consider that it was ever intended to allow 12 years, to encourage appeals to the civil rather than to the revenue courts. The case being to recover money for an illegal act comes also partly under Section 7, Regulation II. of 1805.

I concur with the moonsiff, and dismiss the appeal.



THE 14TH APRIL 1851.

No. 556 of 1850.

*Regular Appeal from the decision of Syud Jonab Ali, Moonsiff of Satkan-neeah, dated 3rd September 1850.*

Rustum Ali and Jaffur Ali, (Defendants,) Appellants,

*versus*

Bauker Ali and Jubbur Ali, (Plaintiffs,) Respondents.

SUIT instituted 13th January 1849 for 3 k. 16-1, being a tank, and to record the names of plaintiffs as occupants in lieu of Mahomed Ami and others, and correct the survey chittas.

The plaintiffs stated that they had always had possession of a tank in mouza Kulmeerza, but which defendants also used on 2nd Maugh 1198: it was measured as dagh 1877 lakhiraj bazaftee zimmah Alam Chowdhry; but defendants have caused plaintiffs' names to be expunged from the chittas and their own substituted.

The defendants replied that the tank is their property: plaintiffs never had possession, it was bought by their ancestor Fuckeer Mahomed. They objected to the stamp.

The plaintiffs denied any sale to Fuckeer Mahomed, but said the tank was dagh 36 of the survey of the turruf in 1126 M. S.

The moonsiff considered that the tank belonged to plaintiffs, it having been dug by their ancestor, and that the sale was not proved as had it taken place, the tank would have in 1126 been surveyed as defendants' property. He decreed for plaintiffs, but directed that defendants should hold possession as ryots.

The defendants appealed, repeating their defence, denying that plaintiffs objected at the survey to the measurement or ever had possession, also denying that the plaintiffs had proved descent from Alam Chowdhry, or that the land was lakhiraj.

## JUDGMENT.

The issue is whether the tank is in the turruf, or in the late lakhiraj tenure. No objection seems to have been made to the survey dagh until one day prior to the expiration of 12 years, when this suit was brought. Defendants appear to have long held possession, and there is no proof that they did so merely as ryots of plaintiffs.

A point which was urged in this court is, in the absence of other evidence, important. The tank is called after Fuckeer Mahomed, through whom defendants claim, the deed of sale to this person, dated 1123, (1761 A. D.) hardly admits of proof.

The objection to the stamp by defendant appearing valid, a duplicate to make up the value was filed by plaintiff.

I consider the evidence insufficient to warrant interference with the survey, and therefore annul the order of the moonsiff, and decree the case to the appellants, with all costs.

THE 14TH APRIL 1851.

No. 567 of 1850.

*Regular Appeal from the decision of Moulvee Abdool Jubbur, Moonsiff of Issapore, dated 16th August 1850.*

Jan Ali Chowdhry, (Defendant,) Appellant,

*versus*

Muttronath Surma, (Plaintiff,) Respondent.

SUIT instituted 2nd November 1849, to cancel a kubooleut illegally taken, Sicca rupees 5, or Company's rupees 5-6-4.

The plaintiff stated that he held no land whatever under defendant in turruf Doulut Morad; but that on the 12th Bysakh 1200, A. D. 1838,) Jan Ali (defendant) compelled him to sign a paper, saying he held a kubooleut from him (plaintiff,) for 2 k. 5 g., at a jumma of Sicca rupees 5-1, and that if the land should be surveyed as his (defendant's) son's property, the kubooleut would stand good, if not it would be returned to plaintiff. The land was not surveyed as the property of Jan Ali's sons, nor did defendant ever collect of plaintiff till now that he demands rent. Plaintiff complained before this, in communication with other parties, but withdrew his complaint.

The defendant Jan Ali replied that plaintiff had given the kubooleut voluntarily and had paid rent for two years. He observed that formerly three persons had sued for this land; that plaintiff had formerly exchanged some land, viz., a tank, for some lakhiraj, consisting of k. 2-5 with Jan Ali's father and Abeloehun.

The moonsiff considered that it had been proved that the kubooleut had been taken under compulsion, and observed that the defendant admitted that the one produced was that in dispute. He decreed the case, and cancelled the kubooleut.

The defendant appealed, denying that plaintiff had proved his case, and complaining of the delay of 11½ years. He also stated that the land had been wrongly described.

#### JUDGMENT.

The first point argued by the appellant's vakeel was whether the plaintiff should not be nonsuited, for not having brought his suit within one year of the alleged illegal act. It has been usual in this district to allow suits like the present to be instituted at any time within 12 years, from which practice this inconvenience has arisen; that cases are frequently tried twice; once to determine whether the kubooleut has been legally taken or not, and again when the zemindar has claimed rent. There is no rule laid down as to limitation in such cases, and the action not being for damages, I have a doubt whether Section 7, Regulation II. of 1805, will apply. The Sudder Court has, however, determined that actions for withholding receipts under Section 63, Regulation VIII.

of 1793, must be preferred within one year, (Sudder Dewanny Adawlut Reports, vol. VI, page 26.) An action for such receipts is not for damages any more than in the present case, and no specific provision having been made in either, the same principle should, I consider, rule both. It is also to be observed that the regulations generally prescribe one year as the period during which ryots may obtain redress for illegal acts on the part of their zemindars, and I cannot consider that compelling a ryot to give a kubooleut, was ever intended to form an exception to the general rule. In refusing to entertain suits to cancel kubooleuts after the lapse of one year the ryot, moreover, is not prevented from pleading that the engagement to cultivate was forced on him, whenever he may be sued for rent by the zemindar. Taking this above view of the law, I must decide accordingly, though regretting that in doing so, some inconvenience may arise from a different interpretation of the Regulation by judges exercising authority in the same district. This must be the case unless the former practice of allowing suits to cancel kubooleuts, to be instituted at any period within twelve years, be abandoned. One benefit can, however, be derived from the change, ryots will no longer, when about to be sued for rent, be able to anticipate their landlord by challenging their kubooleuts in court, thus causing the case to be tried twice.

I have the less hesitation in nonsuiting the plaintiff in the present instance, as his witnesses are scarcely from their connection with him to be credited; and according to his own statement some fraud on the survey, to which he was a willing party, was contemplated when he gave his kubooleut, and he now desires escape from the consequences of his fraudulent act.

On the ground that the suit should have been instituted within one year of the 12th Bysakh 1200, (May 1838,) I annul the moonsiff's order, and nonsuit the plaintiff, who will pay all costs.

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THE 15TH APRIL 1851.

No. 595 of 1850.

*Regular Appeal from a decision of Mr. L. W. Hutchinson, Moonsiff of Putteeah, dated 13th June 1850.*

Nemai Churn Nundee, (Defendant,) Appellant,

*versus*

Kistno Gurja, (Plaintiff,) Gopeenath Nundee and others,  
(Defendants,) Respondents.

SUIT instituted 10th December 1849, to recover rupees 1-1-8, including damages, rent illegally distrained for.

The plaintiff stated that he had always paid rent to Kebul Kissen and Moraree Dhur Nundee, rupee 1-4 per annum; but that the

defendant Nemai Churn Nundee had distrained on him for annas 6-8, as a third of the rent, and sold the property through the sale commissioner, keeping himself in all annas 8-10.

Nemai Churn Nundee replied that plaintiff had, on the 16th Chyete 1203, given him a kubooleut for the land.

Kebul Kissen Nundee (defendant) replied that Nemai Churn held a third share in the tenure. He entered into particulars of descent from the original proprietor.

Moraree Dhur Nundee replied that the tenure was held by him and Kebul Kissen in equal shares. Nemai Churn had no right.

The moonsiff observed that no previous payment of rent to defendant by plaintiff till 1209 had been proved, nor did Nemai Churn ever appear to have had possession; that the kubooleut was suspicious, from the witnesses being related to defendant: he decreed for plaintiff.

The defendant Nemai Churn appealed, repeating his defence.

#### JUDGMENT.

A similar case in which Nemai Churn was defendant was tried by me in December last, (mofussil decisions, page 334, December 1850), plaintiff never appears to have had possession of any part of the land for which he claims rent. The kubooleut is suspicious, being witnessed by appellant's relatives, not by persons of plaintiff's rank in life. Plaintiff has proved regular payment to Kebul Kissen and Moraree Dhur Nundee of his rent, and to them alone.

I now adjudge on the distraint only: if appellant has other claims on the tenure, he must bring them forward in the usual manner. The appeal is dismissed.

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THE 15TH APRIL 1851.

No. 598 of 1850.

*Regular Appeal from the decision of Moulvee Abdool Jubbur, Moonsiff of Issapore, dated 30th September 1850.*

Deep Chund Podar, (Plaintiff,) Appellant,

*versus*

Dattaram and others, (Defendants,) Respondents.

SUIT instituted 15th February 1149, to recover 6 annas, value of 6 bamboos, cut by defendants.

The particulars of this case are given at page 45, mofussil decisions for May 1850, when it was returned for re-trial to the moonsiff: it not being evident whether the bamboos grew on a plot of waste, or of incremental land, and the moonsiff was directed to send an ameen, and also to ascertain whether any punchayet had on a former occasion met to decide the dispute.

The moonsiff on the second trial observed, that the bamboos were on the waste land near Ramdhun's house; that Ramdhun held

possession eight or ten years ago, and then plaintiff for one year, when Dattaram obtained the land, which is bounded on three sides by his talook, and on the 4th by the nullah; that plaintiff had admitted that the pottah held by defendant was for a part of the land for which he plaintiff held a chittee from the zemindar, and the bamboos are in the land leased by defendant. He dismissed the case.

The plaintiff appealed, repeating his assertions, asserting that the bamboos are on old, and the pottah is for new incremental land, and complaining that the moonsiff admitted the bamboos to have been Ramdhun's, and decided against plaintiff.

#### JUDGMENT.

The issue is whether the bamboos grew on land the property of Ramdhun through whom plaintiff claims or on the land of defendant. The principal evidence is that Ramdhun sowed and cut the bamboos, but as asserted and proved by defendant, by permission only; in other respects the plaint is contradictory. The plaintiff says the land was Ramdhun's, if so and he purchased it on the 2nd Assin 1207, why did he on the 2nd Falgoon 1208 take a chittee or promise of lease for it from the zemindar. In appeal, he states that the land is old incremental, but there was no mention of this before. The ameen's plan shows the land to be surrounded by defendant's, and if incremental, such as he could justly claim the settlement of. Possession of waste land is not easy to prove, and each party has given evidence of its having been with him.

Under all the circumstances and the contradictions in the plaint and appeal I have noticed, although the defendant has produced no proof of the *salis* he has alluded to, I consider the proof to be strongest for the defence, and therefore confirm the moonsiff's order, and dismiss the appeal.

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THE 16TH APRIL 1851.

No. 17 of 1851.

*Regular Appeal from the decision of Moonshee Fuzlul Rohman, Acting Moonsiff of Putteeah, dated 19th December 1850.*

Akbur Ali, (Plaintiff,) Appellant,

*versus*

Fuzlul Rohman, Musst. Khuerul Nissa and Asgur Ali, (Defendants,) Respondents.

SUIT instituted 23rd November 1848, to cancel one of two kubooleuts, one for 3 and one for 2 rupees, and the summary orders of 8th January 1847, rupees 8-12-5.

The plaintiff stated that he held 1 kanee of lakhiraj land under the defendant Khuerul Nissa, in mouza Burdoon, under a kubooleut

dated 12th Bysakh 1205; but under Fuzlul Rohman he held no land, but that this defendant had attached plaintiff's property for an alleged balance due for mouza Temohannee. Plaintiff gave security, but, on production of a forged kubooleut by Fuzlul Rohman, the case was given against him. Plaintiff then complained to the moonsiff at Satkanneeah, but Burdoon being in Putteeah, he was referred there when he brought this suit.

The defendant Fuzlul Rohman replied that the kubooleut was genuine; that the term for bringing the suit had elapsed; that Khueral Nissa had applied for settlement of the land, but had been refused.

The moonsiff dismissed the case, observing that though called on, plaintiff had not shown that he sued at Satkanneeah; and more than one year had now elapsed since the date of the summary orders.

The plaintiff appealed, repeating his plaint, and complaining that the moonsiff gave him no time to file the order of the moonsiff at Satkanneeah.

#### JUDGMENT.

The land has been shown by plaintiff to be the property of Khueral Nissa, and the moonsiff's order at Satkanneeah proves that the suit has been brought within the prescribed period of one year. Fuzlul Rohman has given no proof of his assertions, and though summoned, has not appeared.

I decree the case to the appellant, reverse the orders of the deputy collector and declare the kubooleut dated 26th Bysakh 1206 purporting to bear plaintiff's signature, and held by Fuzlul Rohman to be invalid and give all costs against this same person.

THE 16TH APRIL 1851.

No. 600 of 1850.

*Regular Appeal from the decision of Moulvee Abdool Jubbur, Moonsiff of Issapore, dated 9th September 1850.*

Ramrutten, (Defendant,) Appellant,

*versus*

Kooloo Chunder and others, (Plaintiffs,) Respondents.

SUIT instituted 2nd February 1850, to cancel a settlement made with Ramrutten Podar on 29th August 1847, for 1 k. 17 g. of land nowabad, and settle it with plaintiffs, rupees 5-8-9.

The plaintiffs stated that their father purchased 2 small plots of ground consisting of 1 k. 17 g. and 13 g., and left it to them on his death as one tenure. At the survey the land was measured with other plots in all k. 4-16-1 as nowabad, and settled with Kooloo Chunder; but that the additional collector then discovered that

k. 1-17, the land sued for, had not been assessed. In the absence of plaintiffs the land was settled with Ramruten on the 29th August 1847; k. 2-19-1 remained with plaintiffs, but Ramruten never had possession, and on his applying to alter the chittas his request was rejected.

The collector gave no reply.

Ramruten defendant replied that he had inherited 2 kanees of land, which he had mortgaged to Hareechand, whose heirs had given it back to him (defendant;) 13 gundahs had been decreed to plaintiffs, who at the survey caused the whole to be recorded as theirs, but the deputy collector gave defendant 2 k. according to a decree of the moonsiff. Defendant has in another suit sued for correction of the chittas.

The moonsiff observed that the judge's decree of 27th January 1836 showed the land to have been bought by plaintiffs' father of Hareechand, who had himself purchased it of Ramruten and his uncle; that the decree quoted by defendant had been disallowed as obtained by collusion, and that long possession had been with plaintiffs. He decreed accordingly.

The defendant appealed, repeating his defence, but differing as to the name of the ryot occupying the land.

#### JUDGMENT.

The land was surveyed as the property of plaintiffs, and there is no reason to suppose that defendant held possession at any time after the sale of it to Hareechand about 1193, or 20 years ago. In the other case No. 601 he has filed a decree, dated 30th August 1828, giving him rent for some land, by consent of the parties, but on 27th January 1836, the judge considered this decree as collusively obtained and of no value. The plaintiffs having shown continued possession, and the defendant no right whatever to the settlement, I confirm the moonsiff's order, and dismiss the appeal.

THE 16TH APRIL 1851.

No. 601 of 1850.

*Regular Appeal from the decision of Moulvee Abdool Jubbur, Moonsiff of Issapore, dated 9th September 1850.*

Ramruten, (Plaintiff,) Appellant,

*versus*

Kooloo Chunder and others, (Defendants,) Respondents.

SORT initiated 19th December 1849, for possession of 1 k. 17 g. of nowabad land, with mesne profits and interest, rupees 80-7-3.

The plaintiff stated that the above land, daghs 4890, 4891, 4894, 4895, 4898 and 4905, were decreed to him on 30th August 1828,

and settled for with the Government. Defendants have obtained and still hold possession.

Kooloo Chunder and other defendants replied as in the preceding case No. 600.

The moonsiff, referring to the case No. 600, dismissed the suit.

The plaintiff appealed, repeating his plaint.

#### JUDGMENT.

In the foregoing case I have stated my reasons for believing that the plaintiff has not for many years had possession of the land, and on the 27th January 1836 the judge declared the decree under which he claimed to have been obtained by collusion. For these reasons and those stated in suit No. 600, I dismiss the appeal.

THE 17TH APRIL 1851.

No. 607 of 1850.

*Regular Appeal from the decision of Moulvee Zeenutoollah, Moonsiff of Noaparah, dated 3rd September 1850.*

Suffer Ali and Musst. Mookkea Beebee, (Defendants,) Appellants,  
*versus*

Esanchunder, (Plaintiff,) Respondent.

SUIT instituted 5th January 1850, defalcation of character, damages rupees 150.

The plaintiff stated that he was formerly a muhajun, and now tehseeldar on the estate of Akber Ali, on whose account he distrained defendant's property for a balance due, when he was abused by both appellants and by Khueroollah, and threatened by them. Being a respectable man, and having been treated with great indignity, he brings this suit.

The defendant Suffer Ali replied that he was absent when the property was distrained, though the other defendant, his wife, was in the house. On his return home and asking why the cattle had been distrained, he was abused by plaintiff, whom he has sued in another suit.

The moonsiff considered that the witnesses proved that plaintiff had been grossly abused and threatened by defendants (appellants), he acquitted Khueroollah and gave plaintiff 10 rupees damages and costs.

The defendants appealed, repeating their defence, and complaining that costs on the full amount sued for had been allowed by the moonsiff.

#### JUDGMENT.

The plaintiff, as tehseeldar, distrained the defendant's property for a balance admitted in the other case (No. 608) to be justly due.



The witnesses show that he (plaintiff) was threatened by the male defendant, and grossly abused by both. Tehseeldars must be protected in the execution of their duty, but in the present instance I consider the plaintiff's proper course would have been to have applied to the magistrate, instead of suing for extravagant damages. I confirm the moonsiff's order so far as the amount of damages 10 rupees is concerned, but as a civil suit was not necessary, I leave each party to pay his own costs; modifying so far the moonsiff's order.

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THE 17TH APRIL 1851.

No. 608 of 1850.

*Regular Appeal from the decision of Moulvee Zeenutoollah, Moonsiff of Noaparah, dated 3rd September 1850.*

Suffer Ali and Mookeea Beebee, (Plaintiffs,) Appellants,

*versus*

Esanchunder, (Defendant,) Respondent.

SUIT instituted 6th March 1850, for defamation of character, Damages rupees 64.

The plaintiffs stated that their property was distrained by defendant under the circumstances detailed in their defence in the other case No. 607, and on remonstrance by Suffer Ali for having distrained the cattle for so small a balance, plaintiffs were grossly abused by defendant.

Esanchunder defendant replied in the terms of his plaint in case No. 607.

Koorban and Tofan Ali (defendants) replied that they went to distrain the property, and were abused by plaintiffs.

The moonsiff observed that the defendants went to distrain property not to abuse plaintiffs, whose witnesses he did not credit especially as this suit was instituted two months after that brought by defendant. He dismissed the case.

The plaintiffs appealed, repeating their plaint, and referring to the other case.

#### JUDGMENT.

This plaint was brought two months after No. 607 instituted by the defendant Esanchunder. If the plaintiffs had been abused as stated, they would hardly have waited so long to bring their action, nor is it at all likely that plaintiffs never returned any of the abuse as stated by their witnesses. I consider the facts to have been more correctly stated in the other case No. 607, and dismiss the appeal.

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THE 19TH APRIL 1851.

No. 554 of 1850.

*Regular Appeal from the decision of Moulvee Syed Jonab Ali, Moonsiff of Satkanneeah, dated 5th September 1850.*

Mobaruk Ali, Gol Mahomed and Buksh Ali, (Plaintiffs,) Appellants,

*versus*

Omroa Singh and others, Zemindars, (Defendants,) Respondents.

SUIT instituted 21st December 1849, to cancel an illegal settlement of 11 g. 3 c. 2 dt. of land, not to be found, deduct the same from the jumma and correct the chittas of the survey, rupees 11-12-4.

The plaintiffs stated that they held a talook, of which 19 gundahs were the property of Mabaruk Ali, in the zemindaree of the defendants; Mabaruk Ali paid separately for his share. At the survey the ameen measured on the 11th February 1837 the daghs 1905 and 1918, 11 gds. 3 c. as nowabad, and the remaining 19 gds. as lakhiraj buzuftee, giving a total of k. 1-10-3. The total is, however, only 19 gds. 0-1 k. in reality, and the rest 11-3-2 does not exist. The nowabad was settled with Mobaruk Ali, and the lakhiraj bazuftee with all the plaintiffs: rent is now paid for the g. 11-3-2, not to be found. Plaintiff sued before, but owing to irregularity, withdrew the suit on 11th September 1849.

The defendants replied that Mobaruk Ali alone should have sued, and objected to the valuation: they further objected that the suit was brought after the lapse of 14 years, and if it had been brought before this date, defendants could have obtained a reduction of jumma from the collector which will not be allowed now; that the total quantity of land, not to be found, is k. 1 g. 3-3, for a part of which only this action is brought; that the former settlement was cancelled, when the mehal became Government property.

The moonsiff observed, that the estate was Government property, and the court had no jurisdiction, and that it had not been stated how much land was held by each plaintiff. He dismissed the plaint.

The plaintiffs appealed, repeating their plaint, and complaining that the moonsiff had not investigated their suit.

#### JUDGMENT.

The moonsiff is in error in supposing the case not cognizable from the fact of the mehal being Government property; but plaintiffs seem liable to nonsuit on other grounds. The chittas are dated 11th February 1837, and the suit brought 12 years and 10 months afterwards. It is for them to show the cause of delay, which they have not done. The date of the settlement they sue to cancel is

not given, this plea may also be barred under Section 14, Regulation III. of 1793. The interest of the plaintiffs Gol Mahomed and Buksh Ali is not apparent from the plaint. The respondents having, though summoned, offered no objection; I annul the moonsiff's order, and nonsuit the plaintiffs in the original suit; they will pay all costs.

THE 22ND APRIL 1851.

No. 610 of 1850.

*Regular Appeal from the decision of Moonshee Mahomed Akbur, Moonsiff of Rawoojan, dated 12th September 1850.*

Abdool Jubbur, Nuzeeboollah and Hasunoollah, (Defendants,) Appellants,  
*versus*

Sheikh Amanut and Fuckeroollah, (Plaintiffs,) Respondents.

Suit instituted 16th August 1849, for possession of 1 d. 5 k. kackhola, rupees 3-12.

The plaintiffs stated that the kackhola of Hurlungamara, daghs 1107 to 1109, was measured as theirs, and settled with them as nowabad, together with 2 other kackholas their property. In 1200 they sued defendants for cutting the grass, and obtained a decree for 2 kackholas, but were unable to prove previous possession of Hurlungamara and lost their claim for damages. Their rights were, however, established by the decree.

The defendants replied that the kackhola is Hurrungkaya, not Hurlungamara, as stated by plaintiffs, who having sued once and been cast cannot bring this action. The plaintiffs had caused the kackhola to be settled with them in defendants' absence.

The plaintiff rejoined that the former suit for value of grass, did not prevent them suing for possession.

The moonsiff observed that defendants had after the lapse of 13 years sued in another case to correct the chittas; that the survey showed the land to be as described by plaintiffs, and was settled with them; that the kabooleut filed by defendants has the year only mentioned; one is 20 years old, when the grantor was probably a child. He decreed for plaintiffs.

The defendant appealed, repeating their defence, and denying that plaintiffs had proved their case.

#### JUDGMENT.

The chitta of survey with which in the other case, No. 611, I have refused to interfere, shows the land to belong to plaintiffs. They sued before for the grass but their claim was rejected by the moonsiff on the ground that they had not shown previous possession. This does not seem to bar this suit under Section 16, Regulation III. of 1793. The chitta is *prima facie* evidence that in 1838

plaintiffs had possession, and with the discrepancies in defendants' statements noticed in the other case, I decree this on the authority of the survey, and dismiss the appeal. Plaintiffs (respondents,) who have appeared unsummoned, to pay their own costs.

THE 22ND APRIL 1851.

No. 611 of 1850.

*Regular Appeal from the decision of Moonshee Mahomed Akbur, Moonsiff of Rawoojan, dated 12th September 1850.*

Abdool Jubbur and others, (Plaintiffs,) Appellants,  
*versus*

Amanut Oolah and others, (Defendants,) Respondents.

SUIT instituted 13th November 1849, to correct the daghs and to cancel settlement of 5 kanees Hasila land, and including it in 1 droon waste, to settle the tenure with plaintiffs, rupees 15.

The plaintiffs stated that they had held long possession of Hur-rungkaya kackhola; that it was measured as theirs in the khet chittas, but that these were altered by the defendant Amanut Oollah, who was the surburrakar only; this person caused the settlement to be made with defendants. The plaintiffs now sue to correct the chittas, dated 17th Chyte 1198, and for settlement.

The defendants replied that this suit was merely instituted in consequence of their own (No. 610) Amanut Oollah never was surburrakar of the kackhola.

The moonsiff dismissed the suit under Section 14, Regulation III. of 1793, and referred to the other case.

The plaintiff appealed, stating that the case had been brought within 12 years, and referring to the other case.

#### JUDGMENT.

The chittas are dated 29th March 1838, or 17th Chyte 1198. This is an error, the 29th March, 1838, corresponds with 17th Chyte 1199, and from several papers in the case the English date is evidently the correct one. The suit was brought 11 years and 8 months after the cause of action arose; but no reason is assigned for the delay, and the evidence now produced differs materially from that given before the moonsiff in a suit decided on the 18th December 1841. No mention was then made of Amanut Oollah being surburrakar, on the contrary the land was claimed under butwarra, which was not proved, and though Amanut Oollah and others then said that the land had been measured as theirs, and the settlement made with them; this statement does not seem to have been contradicted by appellants, who certainly have till now instituted no proceeding to secure the settlement to themselves. On such evidence, and, as observed by

the moonsiff, a kubooleut of such doubtful authenticity, I do not think that after the lapse of nearly 12 years, the proceedings of the revenue authorities should be disturbed, and I therefore confirm the moonsiff's order, and dismiss the appeal.

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THE 22ND APRIL 1851.

No. 613 of 1850.

*Regular Appeal from the decision of Mr. L. W. Hutchinson, Moonsiff of Putteeah, dated 27th August 1850.*

Chundee Churn Nundee, Kistochurn, and Muhishoree, representative of Fuckeer Chand, deceased, (Plaintiffs,) Appellants,

*versus*

Kalee Churn Thakoor, (Defendant,) Respondent.

SUIT instituted 9th April 1850, for possession of 3 gds. 2 c. of land, rupees 14.

The plaintiffs stated that they owned a tank in mouza Amee-lash, which had silted up. It was measured as dagh 26 in 1126, and was settled with them as turruf, in all 2 k. 11 g. They sold k. 2-1. to defendant and kept 10 g. themselves, besides 10 g. gonzaesh. Defendant dug a tank on what he had purchased, and encroached on plaintiffs' ground, appropriating gds. 3-2 now sued for.

• The defendant denied he had encroached on plaintiffs' land, and claimed the land as hereditary property, being dagh 1485 of the recent survey, and given to him as nowabad with plaintiffs' consent. He subsequently stated he had paid plaintiffs rupees 71-7 for the land.

• The moonsiff observed that the plaintiffs had declared before the deputy collector, that they had given up the tank to defendant, and the payment if made, only showed he had obtained the tank on credit: he dismissed the suit.

The plaintiffs appealed, saying they had not sold the gonzaesh of the dagh No. 1485, and pointing out discrepancies in the defence.

#### JUDGMENT.

The plaintiffs have made out no case. On the 30th July 1845 they gave up dagh 1485 to defendant before the deputy collector, receiving in exchange some incremental land; their witnesses speak to the tank having been dug before 1845, not to the subject of action. It is unnecessary to enquire into the discrepancies of in the defence until plaintiffs have made out their case. I dismiss the appeal.

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THE 23RD APRIL 1851.

No. 614 of 1850.

*Regular Appeal from the decision of Mr. L. W. Hutchinson, Moonsiff of Putteeah, dated 5th September 1850.*

Abdool Ruheem, (Plaintiff,) Appellant,

*versus*

Latoomeea, Amzad Ali and others, (Defendants,) Respondents.

SUIT instituted 5th March 1849, for possession of k. 12-16-2, by annulling the fictitious kuballa and one year's rent 14-8, rupees 63-11-9.

The plaintiff stated that on the 13th June 1842, he bought the above land, being a nowabad mehal, at a sale for arrears of revenue; but being himself in debt to the Government, he took the land in the name of his servant Amzad Ali, from whom he took a kuballa. Having quarrelled with this person, Amzad Ali has sold the talook to Latoomeea, and caused a mutation of names in the collector's register, and plaintiff is now unable to collect from the ryots.

Latoomeea defendant replied that Amzad Ali bought the land and let it to plaintiff on ijara for three years, giving a byenamah, on expiration of three years. Plaintiff returned the land, and gave a release, saying the byenamah had been destroyed. Amzad Ali then sold the tenure to deponent.

Amzad Ali corroborated this statement.

The moonsiff dismissed the suit, observing that under Section 21, Act I. of 1845, the certified purchaser, Amzad Ali, was to be considered the real one; that any private understanding between the parties, was not proved so as to make it a subject for interference; that the court could not sanction the intended fraud of plaintiff of evading his liabilities by holding the talook benamee; and that if Amzad Ali had given a byenamah, plaintiff should have applied to the collector for mutation of names.

The plaintiff appealed, repeating his plaint.

#### JUDGMENT.

Amzad Ali being the certified, must, under the law quoted by the moonsiff, be considered the real purchaser. The plaintiff admits that the kuballa to him was fictitious, as no payment was made for tenure. The court cannot be a party to his benamee transactions. The appeal is dismissed.

THE 23RD APRIL 1851.

No. 616 of 1850.

*Regular Appeal from the decision of Moulvee Abdool Futteh, Moonsiff of Deeng, dated 7th August 1850.*

Moreleedhur and Golukchunder, (Defendants,) Appellants,

*versus*

Nittanund Sen, Plaintiff, Kistochurn and others, (Defendants,) Respondents.

SUIT instituted 1st February 1850, for recovery of 64 rupees, value of a shamiana.

The plaintiff stated that he had borrowed a new shamiana of Rajchunder Biswas; and on 28th Phalgun 1208, the defendants came to his house and borrowed it of him, promising to return it next day. The tent was burnt when under their care, and Rajchunder not having consented to the loan, plaintiff now sues.

The defendants denied having borrowed the shamiana.

Rajchunder Biswas said the tent was his, and he had received 64 rupees for it from plaintiff.

The moonsiff considered it proved that Moreleedhur, Golukchunder, Ramchunder and Mittunjye had borrowed a shamiana, the value of which was 32 rupees. He decreed accordingly.

The defendants appealed, repeating their defence, and noticing discrepancies in the depositions of the prosecutor's witnesses.

The plaintiff also petitioned, requesting under Construction No. 868 a review of the whole case, and claiming 64 rupees.

#### JUDGMENT.

The witnesses prove that defendants borrowed the tent of plaintiff, and did not return it, it having been burnt at a poojah, while under their care. There is some discrepancy in the evidence, but not to any material extent, and defendants have offered no explanation whatever.

The plaintiff claims 64 rupees, but his witnesses say that the shamiana was worth from 30 to 40 only.

I do not see how the moonsiff's order can be amended, and therefore dismiss the appeal.

The respondent having appeared unsummoned, will pay his own costs.

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THE 24TH APRIL 1851.

No. 618 of 1850.

*Regular Appeal from the decision of Moulvee Hadee Ali, Moonsiff of Rungunneeah, dated 20th September 1850.*

Goluckchunder and Kylaschunder, (Defendants,) Appellants,

*versus*

Ali Mahomed, Plaintiff, and Becharam, (Defendant,) Respondents.

SUIT instituted, 29th June 1850, for possession of 3 kanees of land, with wasilat, rupees 53-14-0.

The plaintiff stated that on the 27th Chyte 1207, he purchased of Becharam d. 1-4 of resumed rent-free land, and had the tenure transferred to him by the zemindar. Ramdyal, the father of the defendants (appellants) held in this tenure 3 kanees on a lease expiring in 1208. Ramdyal died in 1210, and his heirs, his son and nephew, refuse either to pay rent, or to give up possession of the land, which is worth 8 rupees yearly.

The defendant Becharam corroborated this statement.

The defendants Goluckchunder and Kylaschunder replied that in 1191 M. their father and uncle bought under the name of Bonomalee, 3 kanees in the tenure of Ramdyal, father of Becharam, at a yearly rent of 5-4; that they wished to settle with plaintiff at the same rate, but he refused.

The plaintiff rejoined that defendants never offered to settle.

The moonsiff observed that defendants had proved neither the purchase nor settlement of the land. The witnesses had only heard of the purchase, one being at the time a child; they also said Bonomalee's wife paid the rent, and no right derived from Bonomalee had been shown to rest with defendant. He decreed the case with wasilat, at 6 rupees per annum.

The defendants appealed, repeating their defence, claiming settlement at the old jumma, and complaining that no notice to settle had been served on them, and that the moonsiff had allowed full costs.

#### JUDGMENT.

The land is admitted to belong to plaintiff, the only issue is the rate of jumma. The plaintiff states that the ijara held by Ramdyal expired in 1208, and the defendants claim by purchase in the name of Bonomalee; this, however, they have not proved, nor that they ever used the name of Bonomalee, or derive any right through him; they state that they offered to settle at the former jumma, but plaintiff refused. No notice to settle was therefore requisite when plaintiff rejected their offer to pay what they said they always had done, but which he denies.

The order of the moonsiff is confirmed, except so far as regards costs, which will be reduced in proportion to the amount awarded.



THE 24TH APRIL 1851.

No. 596 of 1850.

*Regular Appeal from the decision of Moulvee Abdool Jubbur, Moonsiff of Issapore, dated 11th September 1850.*

Essan Chunder and Nittanund Rukhit, (Defendants,) Appellants,  
*versus*

Musst. Zohrub Beebee and Aleemooddeen, (Plaintiffs,) Respondents.

SUIT instituted, 24th January 1850, recovery of 53 rupees, value of cattle, illegally distrained and cancellation of commissioner's roedad.

The plaintiffs stated that on the 7th Phalgun 1168, their father and husband bought 8 gds. of land in the lakhiraj Ourad Baroos, for 172 rupees, of the father of defendants, and that they held some other lakhiraj, which, with the above, had been resumed and settled as nowabad; but that under defendants they now held no land whatever, notwithstanding which defendants distrained their cattle, value 53 rupees, on the 2nd February 1849, for an alleged balance of 8 as., 10 gds. and 1 a. interest, selling one bullock for 1 rupee through the sale commissioner, and retaining 10 in their own hands.

The defendant replied that they distrained one bullock for a balance of 8 as., 10 gds. due by Buksh Ali, who should have sued; that they have a quarrel with all the inhabitants of Durrunpore, who are prejudiced against them.

The moonsiff considered that plaintiffs had made out their case while defendants had offered no proof. He thought it unlikely that the plaintiffs would sue powerful zemindars like the defendants in a fictitious suit, and decreed for 40 rupees, and damages to the same amount, total 80.

The defendants appealed, repeating their defence, complaining that the moonsiff had given damages, which had not been sued for, and noticing the discrepancies in the evidence for the plaintiff.

#### JUDGMENT.

The defendants distrained a bullock, the property of plaintiffs, for a balance 8 as., 10 gds., which they have not shown to be due; but I do not consider sufficient evidence has been adduced that they took 10 bullocks which they still retain. There are many discrepancies in the depositions for plaintiffs, and it is not probable that, if the property was taken, as alleged, the plaintiffs would have waited nine days only, short of one year, before complaining. The moonsiff has given damages not sued for, and for a sum which the stamp will not cover. I reduce the damages to the value of property lost by plaintiffs according to the commissioner's roedad, 11 as., 6 p., with costs in proportion.

The decree will not affect any plaint, the plaintiffs may choose to bring in the criminal or civil court for any property illegally detained by the defendants, still in their possession, or disposed of otherwise, than through the sale commissioner.

THE 24TH APRIL 1851.

No. 547 of 1850.

*Regular Appeal from the decision of Moulvee Syed Jonab Ali, Moonsiff of Satkanneeah, dated 20th August 1850.*

Ayeenuldeen, (Plaintiff,) Appellant,

*versus*

Doolla Ghazee, Moonshee, and Hurchunder Roe,  
(Defendants,) Respondents.

SUIT instituted 7th August 1849, for possession of k. 1-13-3 of land, correction of the survey chittas by recording plaintiff's name instead of defendants, with wasilat to 1210, rupees 28-1.

The plaintiff stated that the above land being dagh 1122 of the survey, was his hereditary talook, and that when the estate was held khas by Government, he paid the collector. The talook was subsequently sold for arrears; but the entire turruf being returned to Hurchunder Roe, the zemindar, the plaintiff claims his talook, as it stood before the attachment by Government. The dagh was surveyed as his, but the defendant, Doolla Ghazee, caused his own name to be fraudulently recorded as proprietor, when the chittas were copied out; plaintiff received a fresh pottah from the zemindar in 1210, when this person re-entered on possession of the estate.

Hurchunder Roe zemindar corroborated this statement.

Moonshee and Doolla Ghazee claimed the land as the talook of the latter.

The plaintiff corrected the number of the daghs to 1222 not 1122.

The moonsiff dismissed the case, considering that all plaintiff's rights ceased when the talook was sold for arrears of revenue, and bought by Budderoossa, which sale plaintiff did not sue to reverse. He considered that plaintiff had admitted this by seeking a renewal of his lease from the zemindar in 1210.

The plaintiff appealed, repeating his plaint, and stating that the land bought by Budderoossa is in another turruf.

#### JUDGMENT.

The evidence of the witnesses and the admission by the zemindar show that the dagh 1222 was previous to the attachment by the collector the talook of plaintiff. It was sold for arrears, and not even asserted to have been bought by the defendants. On restoration of the turruf to Hurchunder Roe, this person renewed the lease to

plaintiff, and though the name of Doolla Ghazee is recorded in the survey chitta as occupant; it certainly does not appear that he was such; but that his name was an interpolation subsequently made.

On the principle which seems to have determined the Court's decision on Messrs. Watson's case (Sudder Dewanny Adawlut Reports, 1850, page 327, &c.) I consider that, on the restoration of the turruf to Hurchunder Roe, the under tenures reverted to their original terms, as held under him, and although from lapse of time I cannot direct the alteration in the chitta, I shall give possession of the dagh 1222 to plaintiff, as his talook under the old lease recently renewed by the zemindar, and annul the moonsiff's order, the date of the zemindar's pottah being 1210, the appellant cannot be allowed wasilat. Costs according to the amount awarded.

THE 26TH APRIL 1851.

No. 622 of 1850.

*Regular Appeal from the decision of Moonshee Ameenooddeen, Moonsiff of Deeang, dated 23rd September 1850.*

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Ramdass, (Plaintiff,) Appellant,

*versus*

Mahomed Budl, the Collector and others, (Defendants,) Respondents.

• SUIT instituted 3rd April 1849, to correct the chittas of 12 g. of lakhiraj behallee land, by transferring it from the talook and turruf of Joynarayan Ghosal, rupees 15-14-8.

The plaintiff stated that he held 12 g. of land lakhiraj in mouza Beelpore; it was in 1126 measured as burmutter Rambudder Pundit, dagh 7: at the recent survey it was called dagh 1814 nowabad, talook Nundolal, to which plaintiff objected but in vain. The talookdar has now distrained for rent.

The collector replied that plaintiff's objections should have been urged before, and that the lakhiraj of Rambudder consisted in all of krant 2, g. 2-1, which was held by other parties; that dagh 7 of the survey of 1126, is not legible, but what appears like the number is 7 not 12 gundas; that plaintiff should have sued the zemindar.

Mahomed Budl denied that on the precedent of Hurgobind Ghose, the court had any jurisdiction in the case.

Deboo and Ghunseam said that plaintiff had always paid rent.

The moonsiff observed that plaintiff had shown no right in the lakhiraj, the talook was sold in 1840, and plaintiff had never objected. He dismissed the case.

The plaintiff appealed, asserting his case proved, and that he and his ancestors had held possession for many years, the holders of k. 2-2-1 are not Brahmins.

## JUDGMENT.

The lakhiraj of Rambudder consists of k. 2-2-1, and is the same area by the recent survey as in 1126. The plaintiff wishes that to this k. 2-2-1, 12, gds. which he claims should be added. He should have objected at the time of survey; but on his petition being rejected by the additional collector, he did not appeal to the commissioner, and only now sues.

He has produced witnesses, who have heard that the land is rent-free, and one says it is a separate tenure. Whether the plaintiff wishes to have an old tenure revised, or that of k. 2-2-1 added to, is uncertain; the evidence he has adduced is quite insufficient to warrant interference with the survey, even if the argument of the vakeel were admitted; that the tenure being under 10 beegahs, the case is cognizable by the ordinary courts, a point which it is not necessary to consider. I dismiss the appeal.

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THE 26TH APRIL 1851.

No. 623 of 1850.

*Regular Appeal from the order of the same Moonsiff, dated 23rd September 1850.*

Ramdass, (Defendant,) Appellant,

*versus*

Mahomed Budl, Plaintiff, and Deboo, Defendant, Respondents.

Suit instituted 20th December 1849, for possession of 12 g. of land, with wasilat, &c., rupees 31-12.

The plaintiff stated that on the 30th September 1841 he bought at sale for arrears of revenue, the talook Nurfdooolal under which defendant (appellant) holds 12 g., which he refuses either to pay for or to vacate; the land is dagh 1814.

The defendant Ramdass replied that the land is his hereditary lakhiraj; that plaintiff had on several occasions claimed rent and been nonsuited by the revenue authorities.

The moonsiff, referring to the preceding case, No. 622, decreed this suit with 12 rupees wasilat, and the plaintiff appealed also referring to the foregoing suit.

## JUDGMENT.

Having in the case, No. 622, disposed of appellant's claim to hold the land rent-free, I can only dismiss this appeal.

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## ZILLAH CUTTACK.

PRESENT : M. S. GILMORE, Esq., JUDGE.

THE 4TH APRIL 1851.

No. 19 of 1851.

*Appeal from the decision of Sheeb Pershad Singh, Moonsiff of Cuttack,  
dated 30th December 1850.*

Sheikh Goomanoolla, (Plaintiff,) Appellant,

*versus*

Suttyabadee Renna and Syud Goolam Tahar, Darogah of the Kuddum Russool Musjid, and after his death Syud Mahomed Attahee *alias* Attaheer, his minor son, through Rahal Alli, his guardian, (Defendants,) Respondents.

CLAIM, rupees 1-14-4-18 kts. rent, with interest of 7 goonths, 8 biswas of land in Bhag Rajah Kulian, mouza Bishnabur, on account of 1255 U., and the reversal of the assistant collector's and collector's orders of the 16th August and 13th September 1848, decreeing the rent of the said land in favor of Syud Goolam Tahar, under Regulation VIII. of 1831, with costs, &c., instituted 12th September 1849.

The plaintiff (appellant) claimed the rent of the land in dispute, stating it to be part of the Kuddum Russool, *peerooter* lands, known by the name of Bhag Rajah Kulian, in mouza Bishnabur, of which he got an *istemrarree pottah* from Syud Goolam Tahar, on the 6th *Jummadiul Sanee* 1247 U., corresponding with the 5th August 1840; and Syud Goolam Tahar, and his son in succession to him, also claimed the rent stating the land to be *peerooter* lakhiraj belonging to the same mosque, in chuck Kutghurra Sahee, in the Azum Khan bazar; and the assistant collector decreed in favor of the latter, on the grounds of a report, furnished to him by the canoongoe, from which he concluded that chuck Kutghurra Sahee and Bhag Rajah Kulian were distinct parcels of land, as doubtless they are. But it appears that when Syud Goolam Tahar was called on to establish his right to hold 58 beegahs, 7 goonths, 3 biswas of *peerooter* land in chuck Kutghurra Sahee, free from assessment, he, on the 20th June 1838, filed a petition in the collectorate, representing that the land in question had been measured in

1838, as part of mouza Bishnabur, and that his title to hold them as *lakhiraj* had already been confirmed on the 30th August 1836, and he in consequence prayed that they might be allowed to remain as they were a part of Bishnabur; and the collector having ascertained from the report of his mohafiz, and the local enquiry made by his order by the canoongoe and tehseeldar; that the land had, as represented, been twice measured; ordered the land to be struck off from the *rugba* of the Azum Khan bazar, in his settlement proceedings of the 20th September 1839. Therefore as the plaintiff stated that the land, the rent of which he claimed, formed part of the land thus struck off from the *rugba* of the Azum Khan bazaar, and Sutyabadee Renna, who cultivated it, stated before the assistant collector that it formed part of Bhag Rajah Kulian, and that he paid the rent of it to the plaintiff, and Syud Goolam Tahar did not deny having granted the *istemrarree pottah* to the plaintiff; all that it was necessary for the moonsiff to do, was to ascertain whether the land was part of the land that had been twice measured, and which had been struck off from the *rugba* of chuck Kutghurra Sahee in the Azum Khan bazar, or not; and if he could not satisfy himself as to this point from the evidence and proofs adduced by the different parties, though from the documents filed by the plaintiff it appears pretty clear to me that such is the case, he should have deputed an ameen to hold local enquiry, and by comparing the *bhourea*, or measurement papers, relating to mouza Bishnabur and the Azum Khan bazaar, have ascertained to which property the land in dispute belonged; but instead of doing this, he, in opposition to the documentary evidence filed by the plaintiff and the general circumstances of the case, held that the defendants' possession was established by the evidence of one of the plaintiffs, as well as that of his own two witnesses, and dismissed the plaintiff's claim, reversing at the same time the order of the assistant collector, because he had decreed payment of the rent in money, instead of in kind or goods, notwithstanding neither of the parties had objected to his doing so; but on the contrary had signified their acquiescence in the arrangement, and represented that they had for some years past been in the habit of paying and receiving the rent in cash. I therefore not only consider the moonsiff's decision irregular and unsupported by the facts of the case; but on referring to the evidence of the plaintiff's witness above alluded to, I do not find that it all bears out the moonsiff's opinion, touching the tendency of it; and it appears that with the exception of two witnesses, whose attendance the respondent, Rahat Alli only caused on the 30th December, the day on which the case was decided, the said respondent did not file a particle of proof of any kind in support of his claim. It is consequently ordered, that the decision of the moonsiff be reversed, and that the case be remanded to him with orders to re-investigate it,

bearing in mind the foregoing remarks. The institution fee will be refunded as usual.

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THE 4TH APRIL 1851.

No. 20 of 1851.

*Appeal from the decision of Sheeb Pershad Singh, Moonsiff of Cuttack, dated 30th December 1850.*

Sheikh Goomanoolla, (Plaintiff,) Appellant,

*versus*

Muddoo Purrera and Syud Goolam Tahar, and after his death Syud Mahomud Attahee *alias* Attahur, through his guardian Rahat Ali, (Defendants,) Respondents.

CLAIM, rupees 1-13-3-2 kts., rent with interest, &c., of 5 goonths, 8 biswas of land in Bhag Rajah Kulian, mouza Bisnabur, on account of 1255 U., and the reversal of the orders of the revenue authorities, dismissing the plaintiff's claim under Regulation VIII. of 1831.

Since the appellant and the principal respondent, Rahat Ali, in this case are the same as those in appeal case, No. 19, just decided, and the land, the rent of which is claimed, is likewise stated by the different parties to form portions of the same chunks as those in which they respectively allege the land in dispute in the preceding suit is situated; and the particulars of the case are in other respects the same, saving only that the appellant, whose claim was dismissed, was plaintiff instead of mozahim in the summary suit, and that the ryot, from whom the rent is claimed, is different; the order passed in the said appeal case, No. 19, is equally applicable to this. It is therefore ordered, that the moon-siff's decision be reversed, and that the case be remanded for re-investigation along with the case No. 19. Copy of my decision in the former case will be filed with this appeal, and the institution fee will be refunded as usual.

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THE 4TH APRIL 1851.

No. 21 of 1851.

*Appeal from the decision of Sheeb Pershad Singh, Moonsiff of Cuttack, dated 30th December 1850.*

Sheikh Goomanoolla, (Plaintiff,) Appellant,

*versus*

Hurrybundoo Mhaintee and Syud Goolam Tahar, and after his death Syud Mahomud Attahee *alias* Attahur, through his guardian Rahat Ali.

CLAIM, rupees 3-1-9-1 kt., rent with interest, &c., of 7 goonths, 6 biswas of land in Bhag Rajah Kulian, mouza Bishnabur, on



account of 1255 U., and the reversal of the orders of the revenue authorities, dismissing the plaintiff's claim under Regulation VIII. of 1831.

The particulars of this case are exactly the same as those of appeal case, No. 20, consequently the same order is passed thereon.

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THE 4TH APRIL 1851.

No. 23 of 1851.

*Appeal from the decision of Sheeb Pershad Singh, Moonsiff of Cuttack, dated 30th December 1850.*

Syud Rahat Alli, guardian of Syud Mahomud Attahee *alias* Attahur,  
(Defendant,) Appellant,

*versus*

Sheikh Goomanoolla, (Plaintiff,) Respondent.

THIS appeal is instituted to set aside that part of the moonsiff's decision in case, No. 19, just decided, which reversed the assistant collector's order, decreeing the defendant's claim to rent in money, without making provision for its payment in any shape, either in money or earthen pots; merely because it appeared during the investigation of the suit, that the cultivators of the lands belonging to the Kuddum Russool mosque, were formerly in the habit of supplying earthen pots for the use of the mosque, in lieu of rent in money; although he at the same time dismissed the claim of the plaintiff, who sued to procure the cancelment of the summary decree passed by the assistant collector; and as none of the parties to the suit objected to the arrangement of cash payments; but on the contrary stated that the practice of supplying the earthen pots had become obsolete; I, as already stated in my decision in case, No. 19, consider the moonsiff's order altogether illegal. And it is ordered, that the appeal be decreed, and that the moonsiff be directed, when re-investigating case, No. 19, to confine his proceedings to the adjudication of the questions pleaded by the respective parties to the suit, and not meddle with arrangements to which neither party object. The institution fee will be refunded as usual.

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THE 4TH APRIL 1851.

No. 25 of 1851.

*Appeal from the decision of Moonshee Gurreeboollah, Moonsiff of Balasore, dated 7th January 1851.*

Sheikh Roshun Mahomud, (Defendant,) Appellant,

*versus*

Brijanund Das, (Plaintiff,) Respondent.

Sheikh Lal Mahomud, Defendant, absent in appeal.

CLAIM, rupees 231-15-10, principal and interest of a bond, dated 20th Aughun 1257 U.

The plaintiff stated that Sheikh Roshun Mahomud and Sheikh Lal Mahomed conjointly borrowed from him the sum of rupees 222, and executed the bond under which he sued, promising to repay the money in three months; and that they both signed their names to the bond in the Nagri character.

On the 21st June Sheikh Roshun Mahomud entered appearance and stated that he had been ill and unable to attend sooner; and having been permitted to file an answer he denied having executed the bond conjointly with Sheikh Lal Mahomud, or ever having had any transactions with the plaintiff.

On the 6th July Sheikh Lal Mahomud attended after orders had issued for the *ex parte* investigation of the case as respected him, and having brought forward witnesses, who deposed that he had been ill, he was also allowed to file an answer, and in it he denied having executed any bond in conjunction with Roshun Mahomud, and stated that he himself borrowed rupees 175 from the plaintiff, and executed a bond on the same date as the bond referred to in the plaint.

The moonsiff held that the execution of the bond on the part of both defendants was fully established by the evidence of two of its attesting witnesses, and that of two other persons said to have been present at the time it was written: and entirely discrediting the evidence of Sheikh Lal Mahomud's three witnesses, who deposed that he alone executed a bond for rupees 175 only, in consequence of the contradictory nature of their statements, and more especially that of Kishen Mohun Das, who was one of the witnesses to the bond filed by the plaintiff, and who acknowledged his signature thereto, though he deposed that the bond he had witnessed was for a different amount, and was executed by Sheikh Lal Mahomud only; and because had Lal Mahomed's statement been true, he would after citing Waris Mahomud, the alleged writer of the bond as witness, have caused his attendance, he decreed the claim.

Against the above decision Sheikh Roshun Mahomud has appealed, but without assigning any valid reason for doing so; he merely denies the bond and states that enmity exists between him and the

plaintiff; but he did not adduce a particle of proof in support of his assertion, though called on to do so by the lower court.

### JUDGMENT.

Although Kishen Mohun Das, one of the witnesses to the bond, filed by the plaintiff, deposed that Sheikh Lal Mahomud only borrowed the sum of rupees 175 from the plaintiff under the bond to which he was witness; and that Sheikh Roshun Mahomud was not present on the occasion; and that the bond he witnessed was written on a stamp paper of the value of 1 rupee only; he acknowledges the signature to the bond filed by the plaintiff, which is written on a 2 rupees stamp paper to be his. And the other two witnesses to the bond have deposed that both the defendants borrowed the sum of rupees 222, and executed the bond, and although both parties stated that Waris Mahomed, the son of Sheikh Roshun Mahomud, wrote the bonds respectively referred to by them; neither of them caused his attendance to give evidence, whereas if Lal Mahomud's statement to the effect that the bond executed by him for rupees 175, was written in the *Nagri* character, (that filed by the plaintiff being in *Ooriah*,) he would not have failed to do so. The reason assigned by the plaintiff for not causing his attendance, viz., that being related to the defendants he was not likely to give evidence in his favor, appears a valid one, though he ought not to have got him to write the bond. I therefore see no cause for interfering with the moonsiff's order, and hereby affirm the same, and dismiss the appeal, without serving notice on the respondent.

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• THE 9TH APRIL 1851.

No. 5 of 1850.

*Appeal from the decision of Moonshee Gurreeboollah, Sudder Ameen of Balasore, dated 17th September 1850.*

Nund Kishore Das Rai Booya and Musst. Sreemuttee Dey Booyanee, mother and guardian of Koonjbeharry Booya, son of Raj Kishore Das Rai Booya, deceased, (Defendants,) Appellants,

*versus*

Das Rutty Punda, (Plaintiff,) Respondent.

CLAIM, rupees 412, principal of a *tumusook*, dated 28th Tool (Kartick) 1248 U., and interest to the same amount, total rupees 824. Suit instituted 11th Maugh 1257, corresponding with the 22nd January 1850.

The plaintiff stated that on the 28th Kartick 1248, Raj Kishore Das Rai Booya, deceased, and Nund Kishore Das Rai Booya borrowed from his uncle, Gobind Punda, the sum of rupees 412, for the purpose of paying a debt to Trelochun Punda, and executed a

bond, engaging to repay the loan in four months ; but Raj Kishore Das died in the month of Srabun 1251, and his uncle, Gobind Punda, on the 5th Kartick 1254, before any part of the debt was paid, and therefore he, as his uncle's heir, sued the defendant for its recovery.

On the 20th April, after order had issued for the investigation of the suit *ex parte*, Nund Kishore Das entered appearance, stating he had been ill, and being permitted to file a *juwab* he denied the claim *in toto*, and stated that he had executed no bond conjointly with Raj Kishore Das, and that as at the date of the bond his elder brother, Raj Kishore Das, had the sole management of family affairs, he had no necessity to borrow money ; and that, if the claim was a just one the plaintiff or his uncle would have demanded payment sooner, and not have delayed ten years to sue for the amount.

On the 3rd June Musst. Sreemuttee Dey entered appearance, and having likewise pleaded illness as the cause of her absence, was allowed to file an answer, and she likewise denied that Raj Kishore Das had borrowed the money, and contended that if he had, the plaintiff would not have waited until after his death to demand payment. She also stated that her husband and Nund Kishore Das had many joint dealings with Brijanund Das and other mahajuns, some of whom held decrees against them, and in consequence of Nund Kishore Das' failing to pay their claims her property was frequently attached for sale ; and this having led to disputes between her and her brother-in-law, they referred the matter of their debts to the arbitration of Radha Sham Das and others, who allotted certain properties to each of them, and arranged that Nund Kishore Das to be responsible for the debts contracted in his and his brother's joint names, and that she was to pay those contracted in the name of her husband ; and as the plaintiff and his uncle, who held the office of poorahit in the family, were fully cognizant of these circumstances they would, had their claim been a just one, have preferred it before the arbitrators, and it would have been included among the other joint debts for which Nund Kishore Das became responsible ; a memorandum of which was recorded at the foot of the *rahinnamah* executed by Nund Kishore Das, in favor of Radha Sham Das, from whom he borrowed money to pay the said debts. She further added that to prevent its being detected that the bond was a forgery, the names of three deceased persons had been entered in it ; viz., one as the lender, and another as the receiver of the money, and the third as the writer of the bond, and alleged, moreover, that the last of these three persons, viz., Sham Churn Das, who was the defendant's *gomashta*, could not write Ooriah, the language in which the bond is written.

The sudder ameen held that the execution of the bond by Raj Kishore Das and Nund Kishore Das was proved by the evidence of Muddoo Barick and Sreeputti Renna, two of the attesting witnesses, and the admission on the part of Nund Kishore Das that the handwriting of the name of Sham Churn Das at the foot of the bond was like that of Sham Churn Das'; and likewise by the evidence of certain other witnesses, who deposed that prior to the institution of the suit, Nund Kishore Das had promised to pay the claim if allowed further time to do so; and as the defendants had failed generally to establish their pleas, and adduced no proof that Sham Churn Das was unable to write Ooriah, though they had been called on to do so, he decreed the plaintiff's claim.

In appeal, the defendants repeat the pleas set forth in their answers before the lower court, and state further that the plaintiff was not the legal heir of Gobind Punda, and should have been required to prove that he was, before he was allowed to sue.

The respondent stated that although Gobind Punda's widow and daughter were alive, they lived with him, and he had previously established his title to sue as his heir, and had instituted several suits as such in court, and received monies due to his uncle's estate.

#### JUDGMENT.

After giving full consideration to all the pleas advanced by either party, and carefully examining the documents filed in support of them, I am of opinion that the plaintiff's claim is a just one, and that the decision of the sudder ameen is quite correct and proper. In the first place, although the defendants plead that the arbitrators, who settled the disputes existing between them, arranged that Nund Kishore Das was to pay all the debts conjointly contracted in his own name and that of his brother Raj Kishore Das; and that Musst. Sreemutty Dey was to be answerable for those contracted in the name of her husband, and that the *ijmalee* or joint debts, for which Nund Kishore Das thus became responsible, were recorded at the foot of the *rahinnamah* executed by him in favor of Radha Sham Das, from whom he borrowed money to pay them; and contend that as the claim made by the plaintiff is not recorded in that document, it cannot be a genuine one. It does not appear that when the arbitrators adjusted the dispute in question, any list of the parties to whom the defendants were indebted was filed before them; but it is quite clear that the creditors were never consulted to ascertain whether the arrangement made by the arbitrators met with their approval or not. And not only is it manifest from an inspection of the *rahinnamah* above alluded to, which was filed by Nund Kishore Das, that the memorandum at the foot of it, which he alleges is a statement of the debts contracted in the names of his brother and himself for which he became

responsible, has been prepared and added on to the *rahinnamah*, after the document itself was drawn up, for it is written on a separate stamp paper, pasted on to the foot of the *rahinnamah*; but the kazee's register, in which the document is registered, and which I called for from the record office of the court, shows that similar tricks have been played with it, and that the names of the creditors, which have been added to the *rahinnamah*, have been inserted in the register after the deed was registered; consequently the principal plea set forth by the defendants not only falls to the ground, but it is clear that they have attempted to support it by forged documents. Secondly, I find that the handwriting of the bond filed in the present suit, corresponds exactly with that of the bond filed in the principal sudder ameen's court in suit, No. 106 of 1846, which was instituted by Oordhub Churn Das against the same defendants, and decreed in favor of the plaintiff; and not only are both these bonds said to have been written by Sham Churn Das, deceased, who was the defendant's gomashtha; but the fact of the bond filed in the present suit having been written by him, is fully proved by the evidence of Muddoo Barick and Sreeputty Renna, two of the attesting witnesses, and the admission of Nund Kishore Das, that the handwriting of the name of Sham Churn Das, affixed to the bond as the writer of it, is like the handwriting of the person represented, viz., Sham Churn Das; and if the bond was not in the handwriting of Sham Churn Das, and the signature attached to it, was not his, the defendants would have had no difficulty in proving the fact, for as he was their gomashtha, they must have been in possession of numberless documents to prove his handwriting. And notwithstanding Muddun Renna, a fourth witness, who attested the bond, and who was brought forward to give evidence on the part of the defendants, denied having witnessed the bond, I find that his signature at the close of his deposition, corresponds with his signature to the bond, and that his signatures to the intermediate parts of his deposition are evidently written in a disguised hand. Lastly, I consider the appellant's plea regarding the plaintiff not being the heir of Gobind Punda altogether inadmissible, as they raised no objection on this score before the lower court. It is therefore ordered, that the appeal be dismissed, and that the decision of the sudder ameen affirmed. The appellants will pay the respondent's costs, with interest to the date of realization.

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THE 17TH APRIL 1851.

No. 1 of 1851.

*Appeal from the decision of Tarrakaunth Bidyasagur, Principal Sudder  
Appeal of Cuttack, dated 9th December 1850.*

Gunes Mahapater, Abkas Cooteah, Bunmalee Cooteah, Manoo Mahapater and Muddoo Soodun Mahapater, (Defendants,) Appellants,

*versus*

Aulea Muddoo Soodun Deb Gosain, (Plaintiff,) Respondent.

Ram Coomar Buttacharjea and Ramchunder Gochyt, (Defendants,) absent in Appeal.

THIS suit was instituted to recover possession of 6 bukras of ghurdee land, measuring 7 haths, with other 4 bukras, on which are erected thatched huts and 3 pucka khottas, or brick houses; also a garden of lakhiraj land measuring 50 by 40 haths, with 3 bukras of thatched huts, &c., situated in Koondai Betsahee Poorsottum Khetro; and resumed lakhiraj mouza Banburrera, pergunnah Rahung, with wasilat; and the reversal of the summary order of the Judge of the 5th July 1847, directing the said property to be sold in execution of a decree obtained by Bultbudder Putnaik against the plaintiff's father, Ram Coomar Bhuttacharjea, one of the defendants, which the other defendants had purchased, laid at rupees 1574-4-0.

The plaintiff stated that the property in dispute, together with the Aulea muth, to which it belonged, was acquired by Aulea Kishen Chunder Deb Gossain, his great grandfather, from whom it descended to his son, Gobind Pershad Deb Gossain, who demised, leaving a son and daughter, Juggernath Pershad Deb and Musst. Narainee, in charge of his widow Kumla Dibeas, who got possession of the property, and after providing for the poor and travellers and the amrut munoohee of Juggernath, according to the practice of the former mohunts or maliks of the muth, supported herself and family with the surplus proceeds, and married her daughter Musst. Narainee to Ram Coomar Bhuttacharjea, his father; and that when he (the plaintiff) was about five years of age, his uncle Juggernath Pershad Deb died, and the sunths and mohunts of his caste installed him in the office of mohunt of the muth, with the title of Aulea Muddoo Soodun Deb Gossain, under the guardianship of his grandmother the abovenamed Musst. Kumla Dibeas, and that his father, Ram Coomar Bhuttacharjea had no right or title whatever in the property, as had been established on two previous occasions, when Ram Sahoo and Cassinath Chowdree attached the portion of it situated in Koondai Betsahee, as his father's property, and it was released on his proving that it formed part of the amrut munoohee property of the Aulea muth in his possession. He also pleaded that as the

property was *amrut munoohee*, according to Regulation XIX. of 1810, and Construction No. 1166, it could not be sold in execution of a decree; and although the judge had ordered it to be sold, because it had been mortgaged to the party who had obtained the decree against his father, he (the plaintiff) was not a party to that suit, and his father had no right to mortgage it.

Gunes Mahapater and the other defendants, the purchasers of the decree, passed against Ram Coomar Bhuttacharjea, denied the plaintiff's claim, and stated that the disputed property was given to his father, Ram Coomar Bhuttacharjea, on the occasion of his marriage, under a *danputro* executed by mohunt Aulea Juggernath Pershad Gosain, dated 29th Assar 1226; and that he on the 7th Bichar 1237 mortgaged the property, together with the *danputro*, to Anunt Putnaik, for a loan of rupees 2000, and Ram Coomar Bhuttacharjea having failed to repay the money, Bulbudder Putnaik, the son of Anunt Putnaik, sued him in the court of the principal sudder ameen, and got a decree on the 28th January 1843, which he subsequently sold to them. They likewise stated that the property in dispute was not *amrut munoohee*, and that the plaintiff was liable for the debts of his father, as had been ruled by the *dywusta* of the court pundit in the case of Cassinath Rai Chowdhry, plaintiff, *versus* Sunthchurn Putnaik, No. 12511, which was decided by the principal sudder ameen on the 28th July 1832.

On the 26th May 1849, Ram Coomar Bhuttacharjea filed an answer to the plaint, in which he denied having mortgaged the property in dispute to any one, or being aware that Bulbudder Putnaik, or any other person, had sued and obtained a decree against him; and stated that, as he had resided for the last ten years at Midnapore, the notice of the institution of the suit should have been served on him through the judge of that district; and, as this was not done, it was clear that the decree was fraudulently obtained, also that the property was *amrut munoohee*, and belonged to the plaintiff, who, after succeeding to the muth, quarrelled with him, and turned him out of the muth, and he had not seen him for ten years.

The principal sudder ameen stated that, in his opinion, the property in dispute was not *amrut munoohee*, as no mention of its being *dewuttur* or *lakhiraj* was to be found in the sunnud, exhibit No. 263, under which Kishen Chunder Deb Gossain acquired the portion of it, which is situated in the town of Pooree; it being merely stated therein, that it was granted to him to live on, and the special deputy collector had resumed the land in mouza Banburrera, because the *lakhiraj* title of the party in possession had not been established; but as both parties agreed that the disputed land belonged to the proprietor of the aulea muth Gobind Chunder Deb Gossain, he held that unless that it could be clearly proved,



that Ram Coomar Bhuttacharjea acquired it by gift, it could not be sold on account of his debts; and this the defendants had not only failed to do, but it appeared from the *rahin tumusook*, on which the decree purchased by them was based; that the *danputro*, under which they claimed the land, as belonging to Ram Coomar Bhuttacharjia, was executed in favor of the plaintiff, and consequently could not have been executed on the occasion of Ram Coomar's marriage. He further inferred from the fact of the defendants failing to file the *danputro*, and its never having been produced in court, that they were afraid to file it, because they were aware that it would prove the plaintiff's claim. And with regard to the defendant's plea touching the son's liability for his father's debts, he remarked that the *byvusta* of the pundit had ruled that a son was thus liable only after the expiration of 20 years from the father's departure for a distant country; and as Ram Coomar Bhuttacharjea, the father of the plaintiff in the present case, had not been absent half that time, he held that the land in dispute was not liable to sale in execution of the decree against Ram Coomar Bhuttacharjea; but that the houses thereon, which, in his opinion, were proved to have been built by him were, and decreed accordingly.

In appeal, the defendants reiterate their plea that the property in dispute was given to Ram Coomar Bhuttacharjea on the occasion of his marriage, and state that the witnesses cited by them had proved that it was so; they also contend that as the decree of the principal sudder ameen of the 28th January 1843, declared the property in question liable to sale in execution of the said decree, and no appeal was preferred from his decision, that decree must be upheld in all its integrality, and cannot be questioned, as ruled by the Sudder Dewanny Decisions of 17th and 26th April 1826, Select Reports; and that the plaintiff's claim was inadmissible, &c.

#### JUDGMENT.

It is quite evident that the property in dispute belonged to the plaintiff's ancestors, and that they, from his great grandfather (on his mother's side) downwards to the plaintiff himself, have successively held the office of mohunt of the aulea muth. Also, that the property in Koondai Betsahee was on two previous occasions exempted from sale by order of the civil courts, when it was attached in execution of other decrees, as the property of Ram Coomar Buttacharjea, because it was proved to the satisfaction of the said courts, that it formed part of the property belonging to the aulea muth, and was in the possession of the plaintiff. And although Ram Coomar Buttacharjea resided for some time after his marriage on that portion of the land, which is situated in Koondai Betsahee, in the town of Pooree, and is said to have mortgaged the whole of it to Anunt Putnaik, whose son subsequently got an *ex-parte* decree against the said Ram Coomar, in which the property was declared

liable to sale in execution; the defendants, who purchased the decree, have adduced no evidence whatever that can be relied on, to prove that the property was given to Ram Coomar Buttacharjea on the occasion of his marriage; but as stated by the principal sudder ameen, it is recorded in the *rahin tumusook*, said to have been executed by Ram Coomar Buttacharjea in favor of Anunt Putnaik, (Ram Coomar now denies having executed the *rahin tumusook*, and states that he knows nothing about Anunt Putnaik's son having obtained the *ex-parte* decree against him;) that the *danputro* was executed in favor of the plaintiff; and this fact entirely nullifies the defendants' statement respecting its having been granted to Ram Coomar on the occasion of his marriage. Under these circumstances I see no reason for interfering with the order of the principal sudder ameen, exempting the land from sale; and with reference to the circumstances of the case, I am of opinion that he should also have released the houses erected thereon; but from this part of his decision the plaintiff has preferred no appeal. It is therefore ordered, that the appeal be dismissed, and that the decision of the lower court be affirmed, without serving notice on the respondent.

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THE 23RD APRIL 1851.

No. 26 of 1851.

*Appeal from the decision of Moheschunder Roy, Moonsiff of Dhumnagur, dated 10th January 1851.*

Kishon Misser, (Plaintiff,) Appellant,

*versus*

Kalee Sawunt, (Defendant,) Respondent.

Gunga Pershad Ghose, mozahim, absent in Appeal.

CLAIM, rupees 13-2-8, value of a rice crop, grown on 1 beegah, 12 goonths, 8 biswas of land in mouza Ankoola, pergunnah Jhajpore, in the year 1257 U.

This case was remanded for re-investigation, in consequence of irregularities in the moonsiff's former proceedings on the 11th September 1850.

The plaintiff stated that he cultivated the land in 1257, under a pottah granted to him by Gunga Pershad Ghose, the mozahim; and when the crop was ripe, the defendant in collusion with Ram Mullick carried it off, and he in consequence sued for the value of it.

The defendant denied that Gunga Pershad Ghose had any land in mouza Ankoola, and stated that the land in dispute originally belonged to Magunee Sawunt, Manoo Sawunt and himself; that Magunee Sawunt mortgaged his share to Arut Sawunt, defendant's brother; and that after the demise of Magunee and Arut Sawunt,

he (the defendant) became sole proprietor, and in 1250 granted a pottah of the land to Ram Mullick.

Gunga Pershad Ghose filed a petition, representing that he purchased the land on the 26th Kartick 1250 from Magunee Sawunt, and that he first cultivated it through Soodursun Misser, the plaintiff's uncle, and in 1257 through the plaintiff.

The moonsiff, after having deputed two ameens, and having himself visited the disputed land, to ascertain who cultivated the crop, out of a mass of conflicting evidence, decided the question in favor of the defendant, and dismissed the plaintiff's claim.

In appeal, the plaintiff maintains that the fact of his having cultivated the crop, was established both by the witnesses adduced by him, and the local investigation held by the ameens.

#### JUDGMENT.

It is evident that this suit has been instituted through the plaintiff by Gunga Pershad Ghose to establish his claim to the land, which is denied by the defendant, but such a claim cannot be enquired into in a suit instituted only for the value of the crop grown on the land, and it is by no means satisfactorily proved who cultivated the crop in 1257. The witnesses named by either party deposed according to the statements of their respective principals; and from the investigations held by the ameens it appears that both parties, one after the other, cultivated the land. I therefore see no reason for interfering with the moonsiff's decision, which is hereby affirmed, and the appeal dismissed, without serving notice on the respondent.

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## ZILLAH DINAGEPORE.

PRESENT: J. GRANT, ESQ., JUDGE.

THE 22ND APRIL 1851.

No. 12 of 1851.

*Appeal from the decision of Itrut Hossein, Sudder Ameen and Moonsiff of Dinagepore, dated 30th November 1850.*

Sanoolla, (Defendant,) Appellant,

*versus*

Abdor Ruheem, (Plaintiff,) Respondent.

CLAIM, rupees 118, due on an ikrar for rupees 50, dated the 2nd Bhadoon 1251.

The defendant pleads fulfilment of the engagement: \*the agreement was to deliver 250 hides. The plaintiff acknowledges having received 132, and claims for the remaining 118 a similar number of rupees. The defendant pleads that the plaintiff's books will prove the fulfilment of his engagement, and that he subsequently served the plaintiff for two months in 1253 at 7 rupees per month, which were duly paid to him.

The plaintiff, in his reply, states that the defendant's wages were not deducted as the ikrar money was payable in skins; and further that the defendant had received 16 rupees dustkurza, which remained still unpaid.

The moonsiff decreed the case, on the grounds that the asserted deliveries of hides are not endorsed according to the terms of the ikrar, or supported by other documents. One rupee per hide is fixed with reference to a proceeding of the former moonsiff, showing that to have been the Calcutta price. This case was instituted in Assar 1256, some five years after the advance, and three years after the defendant had earned 14 rupees from the plaintiff as his servant, and after he had obtained a further advance, without giving even a receipt of rupees 16. The plaintiff stated in the moonsiff's court that he had not khata-buhee, and filed a copy of a proceeding in support of his assertion. He has now produced khata-buhees for 1253 and 1254, and endeavors verbally to account for the discrepancy by saying that his present gomashtha keeps a khata-buhee, though his predecessor did not—a very lame attempt. The plaintiff is an Arab, and the defendant appears now to supply hides to his opponent a Mogul, who

was formerly his gomashtha, or partner and gomashtha. The penalty on non-performance in the agreement is that provided the defendant supplies hides to another party he is to be responsible, (*bepar nisha koriga*), and under such circumstances I think it highly improbable that a balance would be allowed to exist for any great length of time. The deliveries of hides allowed by the plaintiff are not endorsed on the agreement, or supported by any document according to its terms, so that the moonsiff's making that a ground for deciding against the defendant is rather hard, as well as charging him 5 rupees instead of one for 5 hides, because the former had been the Calcutta price some time before.

On the above grounds I reverse the sudder moonsiff's decision, and decree the appeal, with costs.

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THE 23RD APRIL 1851.

No. 2 of 1850.

*Appeal from the decision of Abdool Muijeed, Moonsiff of Beergunge, dated 5th December 1850.*

Rujuttollah and Ally Moollah, (Defendants,) Appellants,

*versus*

Sufrutoollah and Burkutoollah, (Plaintiffs,) Respondents.

CLAIM, rupees 100-12-8, rent for 1253, with interest.

The defendants assert that the jote for which the plaintiffs claim the rent of 1253, was purchased by them from the plaintiffs in 1252.

The plaintiffs state that in 1252 the defendants became sureties for them for the amount of a decree; that they therefore placed their jote and 15 bullocks in pledge for 15 days; that after paying the amount of the decree, they let their jote for which they paid rupees 44-12-13-2 to the defendants on a jumma of rupees 94-9-13-3; that the defendants having ousted them, that is, declined to pay rent, though sued under Act IV. of 1840, and subsequently filed *razeenamah* on the defendants giving a *kubooleut* for 1253; that they subsequently attached the crop, which was released by the collector on the defendants' giving security, but without their knowledge. The defendants assert that they became responsible for the amount of the decree (100 rupees) against the plaintiffs, who sold them their jote for rupees 50 as per *kuballa* and 15 bullocks for a similar sum; that they paid 5 rupees in the first instance to the decreeholder, and subsequently 95 rupees redeeming the *ikrar*, which they had given for that amount; that the plaintiffs gave up their jote by an *istaffa* on which they obtained a *pottah* (in a brother's name) from the farmer; they also allude to the plaintiffs' failure in the Act IV. of 1840 case and the attachment of the crop.

The moonsiff decreed the case principally on the grounds that the *kuballa* had not been registered; that it should have been on a one

rupee stamp, whereas in the first instance two 4 anna stamps were used, subsequently increased through the collector to one rupee; that the defendants were relations of the farmer from whom the pottah and dakhilas filed were obtained; the signature of one of the plaintiffs, who could write, was wanting on the kuballa, and that the pawning of the jote was proved by witnesses including the peadah by whom the plaintiffs were arrested. The said peadah in the first instance said that when the plaintiffs were arrested, the defendants advanced 100 rupees for their release, and that the mortgage deed was written on two bits of stamp paper (this was the case as to the kuballa filed.) He subsequently said that the advance was not in cash, but that was evidently from some hint on the part of the plaintiffs. I have no doubt as to the kuballa being genuine, at the same time I believe that the understanding between the parties was that the jote and bullocks were to be returned, provided the plaintiffs refunded the sum advanced within 15 days. Had the plaintiffs obtained the money elsewhere, and the defendants been mere sureties, there would have been no cause for the jote being lot to the latter; the way in which the money for the decree was obtained would have been stated as well as the return of the bullocks, and there would have been no necessity for suing a tenant for possession in the foudarree. I believe that the plaintiffs' object is to get back their jote without even paying the money advanced to them by the defendants, and that the latter have endeavored to conceal the truth as to the agreement for the return of the property if the advance was repaid in 15 days from the dread of losing both property and money, because the terms of the document (kuballa) and the actual agreement were conflicting. On the above grounds I reverse the moonsiff's decision, and decree the appeal, with costs.

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THE 25TH APRIL 1851.

No. 25 of 1850.

*Appeal from the decision of Soojat Ullly, Acting Moonsiff of Rajarampore, dated 17th December 1849.*

Bydenath Shah, (Defendant,) Appellant,

*versus*

Musst. Panchcowrie, (Plaintiff,) Respondent.

**CLAIM,** rupees 32, due by the defendant, who, as mooktear for the plaintiff, received from her that sum in a case subsequently settled by razeenamah, in which he had nothing to pay on her account as she herself settled subsequently with her vakeel, and no other expense was incurred.

The defendant denies having been the plaintiff's mooktear in the case alluded to, or having received any money from her, and urges

that the case was got up in consequence of enmity between him and his brother, who is on intimate terms with the sister of the plaintiff's son-in-law, and the plaintiff not having paid him (the defendant) 15 rupees, for getting a deed of gift in favor of her daughter registered.

The acting moonsiff decreed the case in favor of the plaintiff, the defendant having failed to produce any thing in support of his answer.

The appellant urges that his temporary absence prevented him proving his assertion. I see no reason for doubting the evidence of the witnesses for the plaintiff. If the defendant was not her mook-tear in the case alluded to, he could have no difficulty in proving it and his abuse of his own, and her relations, appears to be a vindictive addition to his previous dishonesty. I accordingly dismiss the appeal, with costs.

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THE 26TH APRIL 1851.

No. 170 of 1849.

*Appeal from the decision of Radhamohun Chowdhry, Moonsiff of Rajarampore, dated 8th May 1849.*

Jyduu Bewa, (Plaintiff,) Appellant,

*versus*

Jeewun Gundy, Allyjan Gundy, and Nooroo Gharywan,  
(Defendants,) Respondents.

CLAIM, rupees 33-4, value of two bullocks and hire.

The defendants deny their being liable for the value of the bullocks.

The moonsiff dismissed the case, on the grounds of some slight discrepancies in the evidence of the witnesses touching responsibility, arbitration, and what is customary.

It appears that the plaintiff's cart and bullocks with Nooroo as driver, were hired by the two Gundys and taken to the Nekmurd mela, where they are said to have been lost. The driver declares that the Gundys insisted on the bullocks remaining near their shop instead of in the usual station, sent him out to test rupees, and that on his return he found that the bullocks were missing. The Gundys assert that they did not agree to be responsible for the bullocks which were hired and in charge of the driver, and further that as the bullocks were lost under the above circumstances they are entitled to a refund of half the hire. From another case, connected with this, in which the Gundy defendants are plaintiffs, it appears that after the disappearance of Jyduu Bewa's bullocks, they purchased another pair and drove them to Dinagepore in her cart. I see no reason to doubt the plaintiff's witnesses as to the Gundys having agreed to stand the risk of the mela, which is quite a different thing from the common road risk. Had the bullocks disappeared from the regular bullock station, the driver and the Gundys would no doubt have given notice to the police, and

the supposed time and circumstances under which they were lost or stolen would have been stated. The Gundy defendants have not attempted to prove their own assertion as to the whereabouts of the bullocks nor to disprove that of the driver to confute, which, if actually false, there could have been no difficulty. They appear to have considered their plea "that the hirer is not responsible for hired cattle," and that the plaintiff would not be able to prove the exception to the rule in this instance quite enough. Under the above circumstances I consider the plaintiff fairly entitled to recover from the defendants, who were each and all responsible for safe custody of the bullocks, and who, not having attempted to prove their conflicting assertions as to place where the bullocks were stationed, are jointly liable. For the above reasons I reverse the moonsiff's decision, and decree the appeal, with cost.

THE 26TH APRIL 1851.

No. 20 of 1849.

*Appeal from the decision of Moulvee Gholam Asghur, Principal Sudder Ameen of Dinagepore, dated 20th June 1849.*

Jyduu Bewa, (Defendant,) Appellant,

*versus*

Jeewun Gundy, (Plaintiff,) Respondent.

CLAIM, rupees 800, damages for abusive language.

The defendant denies having used improper language, and pleads that having lost her bullocks through the plaintiff, (as detailed in No. 170 of 1849, moonsiff appeals) she requested him to return them back to her, and subsequently complained in the foudaree, when she was referred to the civil court.

The principal sudder ameen decreed 80 rupees, with costs accordingly, on the grounds that the defendant abused the plaintiff who is a respectable man and did not retort, notwithstanding which the defendant complained in the foudaree, and sued in the moonsiff's court in the matter of her bullocks hired by the plaintiff to go to the Nekmurd mela, and not returned to her.

In case No. 170 abovementioned, I have given my reasons for considering the appellant entitled to recover the value of her bullocks from the respondent and others. I cannot in any way concur with the principal sudder ameen in his view of this case. A widow's bullocks are hired by a shopkeeper to take his goods to, and from the Nekmurd fair. The shopkeeper brings back the woman's cart and tells her that her bullocks are lost. The woman is said to have abused the shopkeeper for having deprived her of her bullocks, and he makes no retort, but treats it with silent contempt. The principal sudder ameen appears to think that this treatment ought to have pacified the woman, as he says that not-



withstanding she proceeded against the shopkeeper in the matter both in the foudaree and dewance. If the decisions in this case and No. 170 were to stand, the woman would have to pay upwards of rupees 100, for endeavouring to recover rupees 32, the value of her bullocks from the persons who had taken them away, but had not returned them to her. The plaintiff claiming rupees 800 damages, and including the appellant's daughter and son-in-law in the suit, shows that if he was silent under the abuse he has determined to exert himself to make the appellant and her family pay for it. On the above grounds I reverse the principal sudder ameen's decision, and decree the appeal, with costs.

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THE 29TH APRIL 1851.

No. 145 of 1850.

*Appeal from the decision of Deenobundhoo Chowdhry, Moonsiff of  
Gourgureeba, dated 20th May 1850.*

Manick Meer, (Defendant,) Appellant,

*versus*

Budun Chand Podar, (Plaintiff,) Respondent.

CLAIM, rupees 17-9-7, due on an ikrar for rupees 11, payable in grain, dated the 12th Kartick 1253.

The defendant urges that the advance was agreed to and the ikrar written, but not signed or attested by witnesses as the money was not forthcoming. The defendant, who was arrested under Regulation II. of 1806, stated that he was kept in durance in the plaintiff's house for a day and night, that in order to get free he agreed to deposit the money with the peada who persuaded him to pay it to the plaintiff; that he paid accordingly and obtained a receipt which he was prepared to prove. The answer was filed on the 16th April.

On the 2nd of that month the plaintiff's vakeel, in a petition, stated that there was no necessity for keeping the defendant in durance, and subsequently stated verbally to the moonsiff that the plaintiff had received rupees 21 from the defendant. On the 24th of April, the plaintiff filed a razeenamah, and on the 20th of May, the moonsiff disposed of the case accordingly without any inquiry touching the defendant's grievances, because he had not urged them when released on the 2nd April. The moonsiff's ground for this denial of justice is not even plausible, and I recommend the case for revision.

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THE 30TH APRIL 1851.

No. 121 of 1850.

*Appeal from the decision of Gopalkishen Mujoomdar, Moonsiff of Buddulgachee, dated 14th May 1850.*

Goluck Das, (Defendant,) Appellant,

*versus*

Permanund, (Plaintiff,) Respondent.

CLAIM, rupees 54-13-9, due on a bond for rupees 39, dated the 29th Kartick 1252.

The defendant denies having given the bond or received the money. He attributes the suit to enmity, on account of a man who had lost caste and given money to plaintiff to get him restored, but ultimately failed. He also pleads that his signature is not on the bond though he can write, and that he was not in that part of the country on the date of the bond.

The moonsiff decreed the case on the evidence for the plaintiff, overruling the defendant's pleas, on the grounds that there were more influential persons than the defendant concerned in the man's loss of caste; that from his own witness it was clear that his being able to write was not generally known, and that the witnesses to his absence could not speak to year or dates.

The appellant urges that it will be clear by inspection that the bond is not genuine, and that of the three witnesses to it, one called him (the defendant,) Soorooop, instead of Goluck, and the other two are servants of the plaintiff. The point for decision in this case is, whether the said bond is to be considered genuine or otherwise.

The writer of it says that he entered the plaintiff's service in 1253, the year after it was written. Another witness misnames the defendant, and the third accounts for his having been present by saying, that while passing the plaintiff's house he was attracted by the crowd. The bond was purchased by a third party for his own use; the name of the vendor appears to have been written by mistake on the face of the bond and partly erased, a circumstance not mentioned by the asserted writer of it, though he was gomashta to the plaintiff whose vakeel informed the moonsiff that the vendor had written his name accidentally on the face of the stamp said by the writer and the other witnesses, to have been brought by the defendant.

The dispute about caste is allowed to have been in existence, yet the plaintiff does not attempt to explain the particular circumstances under which the defendant borrowed money from him. The asserted payments of 1 rupee in 1253, and the same amount in the following year, without specifying by whom the payments were made (a circumstance which the moonsiff considers in favor of the plaintiff, with reference to the defendant's plea of absence at the time) are most improbable and suspicious. The money is said to have been borrowed in 1252, and the suit was not instituted

until 1256, though the bond was payable in two months. Under these circumstances I do not consider the bond genuine, and I therefore reverse the moonsiff's decision, and decree the appeal, with costs.

THE 30TH APRIL 1851.

No. 252 of 1849.

*Appeal from the decision of Manickchunder Shome, Additional Moonsiff of Rajarampore, dated 9th July 1849.*

Gobra Mundul, (Defendant,) Appellant,

*versus*

Bojon Mundul, (Plaintiff,) Respondent.

CLAIM, rupees 216-7-9, due on an ikrar for rupees 164, dated the 4th Kartick 1252, in favor of Gedra, who sold it for 82 rupees to the plaintiff on the 32nd of Sawun 1253.

The case was formerly nonsuited, Gedra not having been made a party to the suit, by order of the Sudder Court, dated 17th February 1848, Sudder Dewanny Adawlut's Decisions for February, No. 35, page 94. The moonsiff has now decreed the case against the defendant, Gobra, releasing Gedra, on the grounds that four witnesses to the bond proved that it had been given willingly; that the witnesses for the defendant Gobra are not witnesses to the bond, and know nothing of the circumstances of the case; that the evidence of Gobra's witness, Fakeer Mahomed, does not tally with that given by him before the magistrate; that it appears from the foudaree of Pertab Pullya, witness to the bond, that Gobra gave an ikrar to produce Boda Manjhee, the supposed thief, which does not prove the 164 rupees ikrar to have been taken forcibly, and that Gobra in the theft case made no mention of the said ikrar, and included Gedra's money as well as his own (196 in all) in the charge. The point for decision in this case is whether the ikrar for rupees 164 was willingly given by Gobra to Gedra, or obtained forcibly and fraudulently. It appears that Gobra and Gedra sold their respective cargoes of rice at Moochya (near Maldah); that their money 32 rupees and 164 rupees, as well as Gedra and his servants were on board Gobra's boat; that during the night the rupees were stolen; that an inquiry was carried on in the Moochya zemindaree cutcherry; that Gobra was sent with his manjhee Boda, who was to produce the stolen rupees; that Boda bolted, and Gobra was taken back to Moochya where he is said to have given the ikrar; that Gobra on getting back to his thanna Bunsyharree, in Dinagepore, charged Boda and others with the theft, and at the same time, or at all events as soon as he got to the magistrate, mentioned that the ikrar for rupees 164 had been forcibly obtained from him. The magistrate's roobu-

karee does not allude distinctly to the bond having been forcibly obtained; but I have no doubt on the subject notwithstanding the very crude style of the foudaree proceedings, as evidence was taken respecting the bond for which there could have been no necessity had there not been a dispute regarding it between Gobra and Gedra, and as it appears from the magistrate's roobukaree that each accused the other of theft. I am perfectly satisfied from the evidence and circumstances of the case that the bond was forcibly and fraudulently obtained from the defendant Gobra, and I therefore reverse the moonsiff's decision, and decree the appeal, with costs.

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## ZILLAH HOOGLY.

PRESENT: C. STEER, ESQ., OFFICIATING JUDGE.

THE 7TH APRIL 1851.

No. 22 of 1848.

*Appeal against the decision of James Reily, Esq., late Principal Sudder Ameen of Hooghly, dated 22nd June 1848.*

Dwarkanath Bose, (Plaintiff,) Appellant,

*versus*

Bhyrub Chunder Dutt and others, (Defendants,) Respondents.

SUIT to obtain possession of 7 beegahs of mal land, belonging to the plaintiff's talook Obeerampoor, together with the value of the hakim's share of the produce of the same. Suit valued at rupees 665-12-0.

This case was decided by the principal sudder-ameen in favor of the defendants, on the ground that the plaintiff could give no satisfactory proof that the lands in dispute belonged to his talook, or that he had ever been in possession of the same; but on the contrary it appeared from the evidence and proof adduced by the defendant and his fellow sharers, that the land belonged to them as dewuttur lakhiraj, which had been re-leased to them by the special commissioner after its measurement and resumption by the zillah authorities under Regulation II. of 1819.

Mr. Russell called for further proofs from the parties on the case coming before him in appeal, when the plaintiffs filed certain kubooleuts and a list of five witnesses in their support. The judge, on the 29th June 1849, without taking the evidence of the witnesses, declared the kubooleuts suspicious and untrustworthy, and affirmed for that and other reasons the decision of the lower court.

The case was remanded by the Sudder on the 3rd April 1850, (*vide* page 90 of the volume of decision for that year,) because the judge having called for further proofs should have duly considered whatever proof was laid before him. For the defect therefore of not hearing the evidence, which the judge had himself called for, the case was sent back.

On the suit being brought a second time on the appeal file, the witnesses of the plaintiff were duly summoned, and their evidence having been recorded and read, it is my opinion that the witnesses

are not men of that condition and character, nor their evidence of that nature, which would justify this court in pronouncing *that* to be a good and genuine document, which a prior judge had distinctly affirmed to be suspicious and untrustworthy. On the contrary the parties are inferior servants of the plaintiff, and though perfectly sound of recollection in all that respects the alleged execution of the kubooleuts several years ago, are unaccountably oblivious on less simple and more recent matters on which the defendants' vakseet questioned them. On the ground therefore that both the zillah courts on a full and mature consideration of the whole case, agreed in opinion that the plaintiff had failed to establish his claim, and such opinion being in no way invalidated or reputed by the evidence since recorded, I dismiss this appeal, with costs.

THE 14TH APRIL 1851.

No. 65 of 1849.

*Appeal against the decision of Dhunnujoy Mookerjee, Acting Moonsiff of Dwarhatta, dated 16th January 1849.*

Hurreehur Odeekaree, Appellant, in the suit of Ram Koomar Chuckerbuttee, (Plaintiff,) Respondent,

*versus*

The Appellant and others, Goverdhun Chunder, ryot, and Gunga Pershad Ghose, talookdar, Defendants.

SUIT to recover possession of 5 beegahs of land in mouza Tagurrah, with a moiety of the value of a crop of rice raised on the same in 1254. Suit valued at 107-13-0.

The plaint sets forth that the land belonged for many years to one Ramjee, who on the 4th Maugh 1250 sold it to the plaintiff for 25 rupees. The plaintiff accordingly registered his name as the occupant of the land in the zemindar's books, and he remained for some time in quiet possession paying his rent to the zemindar. In Jyte 1254, the plaintiff gave the lands to the defendant Goverdhun to cultivate, on the condition that he was to give the plaintiff half the produce in lieu of rent; but on the 8th Aughun 1254 the defendants, together with others in number about 70, acting under the orders of the defendant Hurreehur, came and forcibly cut the crop and carried it off to Hurreehur's house.

Hurreehur made answer that the purchase of the land by the plaintiff was utterly false; that the deed of sale was not registered, and that the proper name of the party, whom plaintiff calls Ramjee, was Ramjebun, which facts, the defendants argue, show of themselves that the sale was a made-up affair, for if it had really taken place, the deed of sale would have been registered and Ramjebun's name would have been written correctly. The truth, as he asserts, is that the land was acquired in 1172 by Manickram, the father of

Ramjebun, in the latter's name, when the father died, his two sons, Ramjebun and Tara Chand, succeeded to it, and it remained for a length of time in their joint possession. On the death of Ramjebun, on the 2nd Phalgun 1250, the land became the sole property of Tara Chand, who on the 4th Pous 1253 sold it to the defendant; a deed of sale was drawn out and it was registered, and Tara Chand at the same time made over to defendant the pottah of 1172; also a purwannah of a remote date given by the then zemindar, prohibiting his agents from demanding more than the just rents, and several dakhilas for rent; that besides these papers directly tending to prove that the land belonged to Tara Chand, the defendant can produce a jumma-wasil-bakee and other papers to establish the same fact, and oral testimony likewise, although the plaintiff has included in the suit the greater part of the defendants' witnesses, to prevent their being examined.

Tara Chand supports with his answer the defendants' side of the question, and Goverdhun backs the plaintiff.

The moonsiff for grounds fully detailed in his decision gave judgment in favor of the plaintiff. He sent for the original jumma-wasil-bakee papers alluded to in the defendants' answer from the office of superintendent of surveys; and with respect to the entry in them of Tara Chand's name, as the occupant of the jote recorded in Ramjebun's name, he was of opinion that it was a surreptitious entry, and that an account of the receipts of rent of the said land, in which Tara Chand's name occurred, had been altogether changed; that the writer of the original jumma-wasil-bakee and of the account, and the party whose name occurred in several of the defendants' receipts, denied on his oath that the original papers described the land as in the occupation of Tara Chand, and he also repudiated the receipts. On these and other grounds, and on the strength of the evidence adduced on his side, the moonsiff came to the opinion that the plaintiff's claim was just, and decreed it accordingly against all the defendants except Goverdhun and the talookdar.

Hurreehur alone appeals, his grounds are that he established his claim to the lands by distinct and ample proof, and that he gave cogent and valid reasons why the plaintiff's suit ought to have been rejected as false and resting on fabricated deeds, and collusive evidence. He lays stress upon the deed of sale produced by his opponent not having been registered, and contends that by the law it ought to have been rejected, and that as the plaintiff had made many of the defendants witnesses, defendants in the suit for no reasons; but to prevent their being examined on his behalf he ought, under the precedent of the *Sudder* of the 11th August 1847, to have been nonsuited, and that as to his replication the moonsiff receiving it was very irregular, as proofs and evidence had been called for before its presentation, and therefore the receipt of it at such a stage was improper and illegal.



## JUDGMENT.

I shall dispose of the three latter objections before I consider the general merits of the case.

In regard to the first plea, viz., that by the law the defendants' registered deed of sale ought to have been preferred before the unregistered deed of the plaintiff, this is a most futile objection, for it cannot be made to bear on the case, as the persons from whom the parties in this suit allege they purchased the land from, are not the same. Had the sellers been identical, then it might have been a question whether the defendants' deed being registered was not, under Act XIX. of 1843, entitled to preference; but the sellers are distinct, and the question before the court is, who of the two has the right to sell. If Tara Chand had no right to sell, it is clear that the mere registry of a deed cannot make his sale valid, or confer upon another any right which he himself did not possess.

On the second objection I observe that there is no proof that any of the parties to this suit have been made defendants needlessly, for though some of the defendants' names appear in the deed of sale filed by Hurreehur as witnesses to that transaction, it is not at all apparent that they were not parties to the plunder for which the plaintiff now seeks compensation.

In respect to the third objection, that the replication ought not to have been received after the parties had been called upon for proof, it seems to me, looking at the nature of it, that it was quite immaterial when the replication was filed. There was nothing in it which in any way altered the nature of the plaintiff's case as set forth in his plaint, and had not the plaintiff made any replication at all, his cause would not in any degree have been damaged; but inasmuch as Regulation XXVI. of 1814 lays down that the pleadings must be completed before any exhibits are filed or witnesses summoned, there seems no reason to infer that the receipt of a pleading at any time before any exhibits are actually filed, was meant to be barred. I hold this opinion only in reference to the law as it stood prior to the passing of Act XV. of 1850, whereby moonsiffs are required now to lay down in a proceeding, specially for the purpose, the points at issue. When the decision appealed against was passed, no such proceeding was necessary; but admitting that the taking of the replication at the stage in which it was presented, was not strictly regular, no exception can be taken against it under Clause 4, Section 46, Regulation XXIII. of 1814, which rules that moonsiff's decision are not to be set aside for mere informality.

I now proceed to the consideration of the general grounds of dissatisfaction raised in the appeal. The appellant rests his claim to the land in dispute in virtue of a sale to him made by Tara Chand. The lower court has declared its opinion against the genuineness of

the papers produced by the appellant to prove that the land belonged to Tara Chand. The plaintiff on his part pleads a purchase from Ramjee or Ramjebun. It is certain that the proofs of one or the other of these parties must be false, and, from all the facts of the case, I am inclined to place the greater reliance on the statement and proofs of the plaintiff. They are supported by a very material witness Odoychaut, who acknowledges the genuineness of the papers in his handwriting filed by the plaintiff, and he as distinctly denies his signature and writing in respect to the documents filed by the appellant. The same witness further deposes that the papers produced from the office of the superintendent of surveys in which Tara Chand is said to have been the occupant of the land, were altered and changed, and that there was no such mention in the original papers. The Burdwan Rajah too, who was asked if the pottah of 1172, and the purwannahs said to have been given by his ancestors were true or not, replied that, as to the pottah, which was not sealed, there was no means of judging, but that with respect to the purwannahs, the seals on it did not correspond with the impression of the seals on papers of the same period in his possession. It is also a remarkable fact that though the defendant allows that the land was for several years in the joint possession of the two brothers, Ramjebun and Tara Chand, he has not been able to produce any paper or writing of any sort, except the recent ones which were rejected by the lower court, whereby it might be inferred that Tara Chand was a partner with Ramjebun in the land. These are strong facts against the truth of the papers on which the defendant mainly relies to establish his claim. The proofs of the plaintiff, on the contrary, are open to no such objections. It is admitted by both parties that the lands were held in the name of Ramjebun, and the receipts for rent in the plaintiff's possession for several years anterior to his purchase, prove the same fact, at the same time that the possession of these papers goes far to give credibility to his statement that Ramjebun sold him the lands, or else how could these papers have come into his possession. The very fact too of Ramjebun signing himself by his more familiar name of Ramjee, and not by his more formal name, shows, in my opinion, that the sale was a real and *bonâ fide* transaction, for if it had been a made-up matter and the deed had been prepared afterwards, even the slightest error or discrepancy would have been avoided.

Regarding, therefore, the decision of the lower court as consonant to right, and such as the whole facts of the case warrant, and seeing no ground on which it can be justly impugned, I dismiss this appeal.

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THE 16TH APRIL 1851.

No. 104 of 1849.

*Appeal against the decision of Russicklaul Bose, Acting Moonsiff of Rajapore, dated 10th February 1849.*

Joykysto Mookerjea and Rajkysto Mookerjea, Appellants in the suit of Gholam Russool *alias* Bagdee Meeah, (Plaintiffs,) Respondents,

*versus*

The Appellants and others, (Defendants.)

THE plaintiff sues to recover possession of 131-7-5½ of land as belonging to his kurrajee ayma mehal in the village of Hatal *alias* Onontobatee, in chuck Bindrabunpore and others, from which he has been dispossessed since 1251 by the defendants, the talookdars of lot Koomeermara, within whose estate the ayma mehal lies.

The zemindars make answer that the land in dispute comprizes but 30-17½ and a beel; that the land is not ayma but part of the defendants' talook, and appertains to the village of khas Onontobatee, which is a distinct village from Hatal, which, moreover, is never called Onontobatee; that the 30 b. 17½ k. claimed, is in the occupation, and has been so for a length of time, of one Jug Mohun, a ryot of the defendants, who holds it on a jumma of rupees 31-11-5.

The moonsiff remarks that the question to be tried is, do the lands belong to the plaintiff as part of his ayma mehal in the village of Hatal, or to the defendant as part of his talook in the village of Onontobatee. For various reasons recorded in his judgment he considers that the claim of the plaintiff to the lands is just, and decrees them to him accordingly.

#### JUDGMENT.

It is very true that the point at issue is to whom do the lands belong, but in the due consideration of this question, many incidental points arise, which have not been adequately regarded by the lower court. The decision is founded in a great measure on conjectural matter, for instance the lower court has taken it for granted that the village of Hatal is identical with Onontobatee and khas Onontobatee; that certain lands released to the plaintiff in a resumption suit, are the same as those for which he now sues; that certain ryots' holdings to realize the rents of which the plaintiff took out process of attachment, or made a summary suit, were part and parcel of the lands comprized in the boundary, now claimed as the plaintiffs' ayma mehal. It is very true also that an ayma mehal having a quit rent of rupees 7-11-15, is recorded in the name of the plaintiff; but whether any part of that ayma mehal lies within that part of the defendants' estate as is now alleged, has not been adequately enquired into. It may also be very true that, once upon a time, the plaintiffs' ancestors, or the plaintiff himself, may have been in possession of the lands or part of them now

claimed; but it is equally possible that he or they have been long dispossessed, and are not entitled to recover their lands by reason of lapse of time. This plea of adverse possession ought to have been better enquired into than it was, for I observe that the plaintiff's proofs were confined only to the period about the time of his dispossession, all which proofs, the defendants pleaded were obtained by collusion and fraud, with a view to support the plea he has now set up to lands which never were in his occupation.

On these grounds I must remand the case. The moonsiff will either go himself to the spot, or depute a trustworthy intelligent ameen (duly appointed) to hold a local enquiry in regard to the identity, or otherwise, of the village or villages called Hatal, Onontobatee and khas Onontobatee, and should they prove to be distinct villages, their respective situation must be shown. A map must be also made indicating the boundary of the land claimed, and by which it may be seen whether or not the lands released in the resumption suit were the same as those now sued for, and whether the ryots' holdings for which the plaintiff claimed rents under Regulations V. of 1812 and VII. of 1799, are comprized within the boundary now claimed. At the same time the moonsiff will call upon the plaintiff for any proofs he may desire to advance of his possession of the lands in dispute anterior to his alleged dispossession in 1251, such as measurement chittas, jumma-wasil-bakee, ryots' kubooleuts, &c. &c.

The defendants have not urged in their appeal that the value of the stamp was made on a wrong calculation; but they did so in their answer, and the plea ought to have been noticed by the lower court in its judgment.

The whole case being re-opened, the moonsiff will not omit in his next decision to take into consideration in the proper and prescribed manner the matter of valuation.

The case is returned that the lower court may act as above indicated, and the value of the stamp for the appeal will be refunded to the appellant in the usual manner.

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THE 17TH APRIL 1851.

No. 10 of 1850.

*Appeal against the decision of Pundit Sreeram Turkolunkar, Sudder Ameen of Hooghly, dated 20th February 1850.*

Henry Voss, (Defendant,) Appellant,

*versus*

Free Jose Augustinho Gomes, Prior of the Bandel Church,  
(Plaintiff,) Respondent.

THIS is a suit instituted by the present incumbent of the Bandel church against the defendant on a bond for 700 rupees, borrowed

on the mortgage of certain property, from a former prior of the church by whom the bond was made payable to his successor, or successors in office. The defendant had paid 400 rupees on two occasions on account, the last payment being on the 12th February 1839, and the amount now claimed comes to 786-6-8-2, including interest.

The defendant denies borrowing the money or executing the bond, or paying anything on account of it. He pleads that the suit is inadmissible under the law of limitation, and that the alleged payment of 100 rupees on account on the 12th February 1839, is but a shallow attempt to rescue the case from the statute of limitation. He urges that it is very unlikely that none of the several predecessors of the plaintiff in office, thought of making a suit against him during the many years that the bond was in their possession, and to show that the bond was a forgery he alleges that the property pledged in consideration, did not belong to the defendant on the date borne in the bond. The defendant further pleads that the suit is a made-up one by the former clerk of the church with whom the defendant is on bad terms.

The sudder ameen after making the requisite enquiry with a view to settle the question of limitation, and deciding that lapse of time did not bar the suit, proceeded to try it on its merits when considering that the claim was fully proved, he decreed the suit in plaintiff's favor.

The defendant appeals, urging, besides what his answer contains that it was an illegal proceeding of the sudder ameen to send for the Bandel church fund account-book from the records of another suit, and that by the precedents of the Sudder as published in page 130 of the volume for 1843, and in page 902 of that of 1848, the proper course was to call upon the plaintiff to file copies of the account. It is further urged that, the account-book was not sworn to, and that the witnesses examined in respect to the contraction of the debt, and matters thereto relating, were not worthy of credit and that the sudder ameen had not entered in his decision, as fully as he ought, into the questions raised in the answer, especially in respect to lapse of time and the plea that the mortgaged property, at the time given in the bond, was not in defendant's possession.

#### JUDGMENT.

It is no doubt the proper course to call upon parties to file copies of papers required to prove any point, rather than that the court should send for such papers from the record of other cases; but no general rule is without an exception, and the reason assigned by the plaintiff for not filing copies of the church account-book were cogent, and such as the lower court rightly allowed. But the

plea is a vain one, for the plaintiff's case was proved, and the production of the account was quite immaterial.

The question of the lapse of time is not noticed in the final decision ; but it was not requisite that it should be, as on that point a separate proceeding was held when the plea was overruled, and the grounds were, in my opinion, valid.

On the other points raised in appeal, it is my opinion that the judgment of the lower court is perfectly just and cannot be impugned. The bond was proved, its endorsement in favor of the future successors in office shows that the original prior lent the money out of the funds in his charge as prior, and not in his private capacity, so that the plaintiff, in virtue of his office, has a clear right to sue for the account due on the bond. It was proved also that the two payments were made by the defendant on the dates alleged, and that the last payment was within 12 years from the date of institution of this suit, and a note in the defendant's handwriting, of very recent date, corroborates both the fact that he borrowed the money, and that he intended to make some settlement of it. As to the plea that the property mentioned in the bond as pledged in security for the debt did not belong at the time to the defendant, this neither invalidates the bond nor is it any ground to discredit the transaction to which it relates, whether the property was, or was not, the property of the defendant can have no effect in determining whether the debt was contracted or not. If the fact alleged is the truth, the only inference to be drawn from it is that the defendant raised money on false pretences ; but it was for the defendant to prove that plea in the lower court, but, so far from doing so, he gave no proof on that point, nor did he summon witnesses on any other.

On these grounds seeing nothing to impugn the justness of the decision of the lower court, I hereby confirm it, and dismiss the appeal without summoning the respondent.

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THE 21ST APRIL 1851.

No. 138 of 1849.

*Appeal against the decision of Dhunnunjoy Mookerjee, Acting Moonsiff of Dwarhatta, dated 28th February 1849.*

Bydnath Kowur, Appellant in the suit of Shibkishen Mitter and others, zemindars, (Plaintiffs,) Respondents,

*versus*

The Appellant gomashtha and two others his securities,  
(Defendants.)

THE plaintiffs sue to recover the sum of rupees 266-5-15 as balance of collections of rent unaccounted for in the hands of the first defendant.

Bydnath Kowur admits he was the gomashtha of the plaintiffs, but pleads that the remittances made by him, together with what he was entitled to as surrinjanree and other usual charges, was in full of the sum collected by him from the plaintiff's estate.

The moonsiff sent an ameen to prepare an account of the collections actually made; but decreed the claim, not on the result of the local enquiry, but on certain papers filed by the plaintiffs, and admitted by the defendants to be those which he himself supplied.

The defendant appeals. His grounds are that by the judgment of the lower court he is made liable to certain collections made before he took charge of the estate, and that as to the balance claimed there was no proof of it, as the account of the plaintiff and that made by the local ameen were contradictory.

#### JUDGMENT.

The defendant admitted giving the account on which the lower court has held him liable for the claim made against him. Before the moonsiff he said that he would point out such items as he considered had been altered since the papers went into the plaintiffs' hands; but though the case was pending some time after this, and he had abundant opportunity to make his objections to the account known to the court, he omitted to do so. The lower court could not therefore do otherwise than decree the claim of which he gave the proof in his own papers.

As to the plea that he has been held liable for certain sums collected before his appointment as gomashtha, the amount so collected was very trifling and does not affect the claim against the defendant more than 9 or 10 rupees; but the sum so collected is entered as a receipt in the defendant's papers, and was part of the first remittance made by him to the plaintiffs; which shows that he not only took the debt on himself, but that he actually received the amount.

Seeing therefore no reason to doubt the correctness or justness of the decision appealed from, I confirm it, and dismiss this appeal, without requiring the attendance of the respondents.

THE 22ND APRIL 1851.

No. 67, of 1849.

*Appeal against the decision of Doorgapershad Ghose, Moonsiff of Nyasurraie, dated 27th January 1849.*

Hur Muneé Dassea, (Defendant,) Appellant,

*versus*

Shama Churn Batacharj and Ram Kumul Kund, (Plaintiffs,) Respondents.

SUIT to cancel a forged deed of sale in regard to 1 beegah of lakhiraj land in the village of Kamarpara, to recover balance of rent

on account of the same, and to have plaintiffs right to the land judicially confirmed. Suit laid at 104-10-15.

The plaintiff sets forth that the defendant holds in jumma under the plaintiff 1 beegah of his lakhiraj land in the village of Kamarpara; that the plaintiff brought a suit against her for the balance of rent of the said land from 1249 to 1254, which, owing to an omission of a party, was nonsuited. In that suit the defendant alleged that she had purchased the land. The plaintiffs therefore bring this joint suit, Shama Churn to have the forged deed of sale set aside and to recover his rents, and the second defendant, Ram Kumul Kund, to have his right by purchase to the said land, as admitted by Shama Churn, confirmed to him.

Hur Munee answers that she purchased the land from the first plaintiff on the 31st Sawun 1249, for 61 rupees, and that his claim for rent and the second defendant's plea of purchase were both false and fraudulent.

Shama Churn pleaded, in his replication, that he would file documents to prove that in Sawun 1249, his brother, Gopal Batacharj *alias* Oma Churn was alive, and was half owner with him of the said land, and that if the defendant's purchase was true, the plaintiff's brother would have been a party to the sale.

The moonsiff on almost entirely conjectural grounds gives judgment for the plaintiffs. In reference to a petition from the defendant that a local enquiry might be made in regard to the alleged demise of Gopal Batacharj *alias* Oma Churn, the plaintiff's brother prior to Sawun 1249, the moonsiff rejected it, observing that nothing was wanting to complete the plaintiff's proof, and that as the sale to the defendant was found to be false, it would be quite supererogatory to make any further enquiry in the case.

#### JUDGMENT.

The case is not such a clear one in my opinion as the moonsiff regards it, and I consider that he has satisfied himself with evidence by no means complete or convincing. The plaintiff filed two kubooleuts from ryots of other land belonging to him as proof, that his brother was alive in Sawun 1249, the object thereby being to prove that the defendant's deed of sale was a forgery. The defendant met this with a demand that a local enquiry might be made to ascertain the point, and I consider that an enquiry was imperatively called for, for on the result depends the truth or falsehood of the defendant's purchase, and it would also bring to light upon what kind of documents the plaintiff's case was supported. If the plaintiff's brother was alive and half owner with him of the land in question in Sawun 1249, the inference would be clear; that the plaintiff's deed of sale was a forgery; if on the other hand, it was proved that plaintiff's brother was not alive in 1249 the presumption is strong; that the two kubooleuts filed by the defendant



in support of that fact are false, and this fact, if established, would be a strong ground for rejecting his claim, as showing that he has not scrupled to use foul means in carrying on his case. Regarding therefore the investigation of the lower court as not so complete as the nature of the case demands, I remand the suit to the moonsiff, in order that he may institute a local enquiry, or call upon the parties to give proof of their respective statements in regard to the time of Gopal Batacharj *alias* Oma Churn's decease, after which the moonsiff will again record his judgment.

The value of the stamp for the appeal will be refunded to the appellant.

THE 23RD APRIL 1851.

No. 221 of 1849.

*Appeal against the decision of Nobeenchunder Mitter, Moonsiff of Rajapore, dated 15th June 1849.*

Jye Kishen Mokerjea and Raj Kishto Mokerjea, Appellants in the suit of Bungshee Dhur Mal, (Plaintiff,) Respondent,

*versus*

The Appellants and others, Defendants.

SUIT to cancel an attachment and to recover the sum of rupees 17-9-0, exacted in process of the same.

The plaint sets forth that the defendants alleging that the plaintiff held a *jote* jumma of rupees 33, in the village of khas Rooderpoor, and that he was in balance on account of 1252, to the amount of 32-4-0, attached certain articles of the plaintiff's property and caused them to be sold, when the same were purchased for 17-9-0, by the defendants' gomastas, Ram Taruck and Goluck Chand, and by Haro Mal and Surroop Kolea. The plaintiff denies that he holds any land belonging to the defendants' zemindaree of khas Rooderpoor, and alleges that he is a ryot of one Syudoonissa, in whose resumed estate the plaintiff's lands were included by a Government measurement ameen.

Jye Kishon Mokerjea, Raj Kishen Mokerjea, Ram Chunder Chatterjea, zemindars, and Ruggonath Ghose, izardar, make answer that the lot Komermora, to which khas Rooderpoor appertains, is the joint property of the defendants, the zemindars, and 3 other distinct sharers, and that a suit which involves the question, whether the lands lie in the resumed lakhiraj mehal of Syudoonissa, or in the estate of the defendants, cannot be tried except in the presence of all the sharers.

The defendants urge that it is very true that the plaintiff, at the instigation of the said Syudoonissa, did point out and cause to be measured certain portions of his land in khas Rooderpoor, as belonging to the estate of the said Syudoonissa, and that the

same was afterwards resumed; but the land for which the defendants distrained the plaintiff's property was exclusive of what he had measured as belonging to the lakhiraj mehal of Syudoonissa, and that he acknowledged his liability to the defendants by executing an agreement to pay them rent for the same.

Two ameens were employed one after the other to make a local enquiry. The first reported that the land for which defendants made a distraint belonged to the defendants' estate of khas Rooderpoor, which report was set aside as not satisfactory. The second ameen, as might have been expected, reported altogether in favor of the plaintiff, and the moonsiff has almost entirely relied on his report in drawing up his judgment in favor of the plaintiff.

#### JUDGMENT.

The defendant's plea is that under color of some of his land having been included in a resumed mehal belonging to Syudoonissa, the plaintiff seeks to keep clandestinely in his possession 9 beegahs of land, which were not so measured, and which not having been declared part of the resumed mehal, belong to them as of right. They are willing that the plaintiff keeps what was included in the resumed mehal, but what was not so included, they contend they have a right to demand the rent. The enquiry in the lower court does not, by any means, make it clear that the plaintiff has not in his possession any lands, but such as were measured as forming part of the resumed mehal. The enquiry made by the ameen last sent was conducted in a very loose manner, and his report in favor of the plaintiff rests greatly on conjecture and presumption. Whereas it should have shown clearly that the different bunds stated by the defendants to be in plaintiff's possession were either not so, or were part of the same lands which were included in the resumed mehal. For this purpose it was necessary to measure both the different dags as they appear in the plaintiff's copies of chittas, and also according to the bundwarra given by the defendants. If the suit should prove that the plaintiff has any land beside what his own chittas show, for that he is clearly liable to the defendants, for if they were not measured as part of the resumed mehal, they are clearly mal, and as such the defendants are entitled to demand rent for them.

The case is therefore remanded in order that the moonsiff may have a local enquiry made for the purpose above indicated. The ameen should be informed with the substance of the above remarks to enable him to see what is expected from his investigation, and he should be required to prepare a map showing the locality and boundary of the several patches of land specified in the Government ameen's chittas, and a second map should be made, giving the same particulars of the lands indicated in the defendants' bundwarra, whether any and all is in the plaintiff's possession, and

whether any and what part is identical with the lands measured as lakhiraj.

The moonsiff will then decide the suit *de novo*, giving due weight to the result of the local investigation now ordered.

The stamp for the appeal will be refunded to the appellant in the usual manner.

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THE 25TH APRIL 1851.

No. 1 of 1850.

*Appeal against the decision of Denonath Bose, Moonsiff of Dwarhatta, Zillah Hooghly, dated 26th April 1847.*

Sheikh Shumsuddeen and others, Appellants in the suit of Muddoodun Sircar, (Plaintiff,) Respondent,

*versus*

The Appellants and others, Defendants.

THIS is a suit to recover rupees 62-11-4, principal and interest, due to the plaintiff on a bond, executed by the defendants.

The defendants were absent in the lower court, and a decree was passed against them on an *ex parte* investigation.

The appellants urged in their petition, among other pleas, that the notice never reached them, and the proclamation was not published in the village where they reside; and on looking at the papers of the case and the evidence of the two witnesses who certified to its execution, I find that they are men who reside in the same village with the plaintiff, and not where the defendants live. The process of the court not having been executed in the manner the law directs, inasmuch as it was not verified by any person resident in the same place as where the defendants live, I remand the case for trial *de novo*.

The value of the stamp for the appeal will be refunded to the appellant in the usual manner.

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## ZILLAH MIDNAPORE.

PRESENT: W. LUKE, ESQ., JUDGE.

THE 1ST APRIL 1851.

No. 267.

*Appeal from a decision of the Sudder Ameen, Taruck Chunder Ghose,  
dated 28th November 1850.*

Niamut Shah, (Defendant,) Appellant,

*versus*

Musst. Taramonce, mother and guardian of Suroopnarain Roy,  
heir of Gunganarain Roy, deceased, (Plaintiff,) Respondent.

THIS is an action for possession of 316-6-6 land, with mesne profits, laid at Company's rupees 646-12-7.

The plaintiff states that defendant, for a consideration of Company's rupees 425, sold to her husband conditionally the villages Dowlpottah and Dowlmaree, and executed a deed of mortgage on 2nd Phalgun 1251, to be redeemed in the month of Aughun 1252, in failure thereof the mortgage to be foreclosed. At the expiration of the latter period the usual notice was served on and acknowledged by defendant, and in default of the latter the mortgage was foreclosed and plaintiff now sues for possession.

The defendant denies the claim, and pleads that the deed on which plaintiff sues is a fabrication; that he is entirely ignorant how, when, or where it was executed. He acknowledges having mortgaged the aforesaid villages to plaintiff's brother for a trifling sum to meet certain liabilities, but on consideration of his (defendant's) becoming surety for plaintiff's husband in lease of a zemindaree which he had taken from Government, the deed of mortgage was returned to him on the 4th Phalgun 1251, it was therefore highly improbable that under such circumstances the deed of mortgage, on which the present suit is founded, should have been executed on the 2nd Phalgun 1251.

The sudder ameen observes that the forms prescribed in Section 8, Regulation XVII. of 1806, and Circular Orders of 22nd July 1813, have been duly observed, and notice of foreclosure duly acknowledged by the defendant. The issue then to be adjudicated is whether the deed of conditional sale is valid, and defendant received a valuable consideration from the same. He remarks that the

execution of the deed and payment of the money is fully established by the evidence of attesting witnesses confirmed by the registration. In reference to the issues raised in bar, he observes that defendant's exhibits do not support his averments. The lease in which defendant became surety was taken by Kistomohun Dutt, not by Rajnarain Roy; that defendant was not *alone* surety, but associated with one Gouree Preea, and that there is nothing on record to prove plaintiff's connexion with Kistomohun Dutt, and accordingly gives a verdict for plaintiff.

In appeal, the defendant reiterates the pleas raised below, urging in addition that sickness prevented his appearing to dispute the plaintiff's claim on the issue of notice of foreclosure.

I concur in the finding of the lower court. The defendant attaches weight to the circumstance of the deed of conditional mortgage being returned to him on the 4th Phalgun 1251, as rendering it exceedingly improbable that he should execute a second mortgage for the same property on the 2nd Phalgun 1251, for a much larger sum. It appears, however, that the mortgage of the 2nd Phalgun was not completed and registered till the 4th Phalgun, ~~the~~ day on which the first mortgage was restored to defendant, and there is therefore nothing improbable in his again mortgaging his property to the plaintiff; that he did so is fully corroborated by the evidence on record. The decision of the lower court is accordingly affirmed, ~~without~~ serving a notice on the respondent.

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THE 3RD APRIL 1851.

No. 14 of 1851.

*Appeal from a decision of the Moonsiff of Bugree, Sreenath Bhooya, dated 30th December 1850.*

Ramoo Bhukut, (Plaintiff,) Appellant,

*versus*

Benode Sekra, (Defendant,) Respondent.

THE plaintiff sues for a bond debt, laid at Company's rupees 28-11-8. He states that defendant borrowed from him Company's rupees 18-4, for which on 19th Assar 1252 B. S. he gave him a bond to be redeemed in the month of Aughun following.

The defendant denies the bond, and pleads that he borrowed the amount aforesaid and gave plaintiff a bond on 26th Assar 1251, but that he redeemed it in 1253, 13th Assar.

The moonsiff dismisses the claim, plaintiff failing to appear in person and to depose on oath that the witnesses (who after being cited had failed to appear) were material to the issue of the case. With this award the appellant is dissatisfied, first, because six weeks had not elapsed between the date of moonsiff's order for his (plaintiff's) appearance and the date of final decision of the case,

and secondly, because the property of five out of the seven witnesses had not been attached. In reference to the latter objection it appears that plaintiff could not point out any property belonging to five of the witnesses, *ergo* an attachment could not be served, and in reference to the former objection Act XXIX of 1841 is not applicable, *vide* Sudder Court's Decision 20th July 1850, Huree Mohun Mujoomdar, petitioner. The moonsiff has, however, reversed the order prescribed in Section 6, Regulation IV. of 1793. He should have required the plaintiff's statement *on oath before* and not *after* directing the arrest of the witnesses and attachment of their property. The decision of the lower court is affirmed, without serving a notice on respondent.

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THE 3RD APRIL 1851.

No. 16.

*Appeal from a decision of the Moonsiff of Anundpore, Omeschunder Mookerjee, dated 16th December 1850.*

Rajnarain Dutt and others, (Plaintiffs,) Appellants,

*versus*

Musst. Soorjomonee and others, (Defendants,) Respondents.

THIS is an action for possession of 4 beegahs of land, with mesne profits, laid at Company's rupees 123-11-2. • • •

It is unnecessary to enter into the merits of this case. The defendants acknowledge the claim, and propose to restore the land *with costs* to plaintiffs. The moonsiff, however, rejects the solanamah on the grounds that the suit itself is barred by lapse of time.

The appellant demurs that the moonsiff has calculated the 12 years from a wrong period. This issue, however, need not be inquired into, as on reference to the records of the case it appears that the moonsiff finally disposed of it in his proceeding held under Section 10, Regulation XXVI. of 1814, wherein he ruled that Section 14, Regulation III. of 1793 was no bar to the progress of the suit. The cause of action having arisen within 12 years, and as neither party was dissatisfied with this order, it became absolute. The moonsiff cannot therefore at a subsequent stage of the proceedings, that is, in his final decree, dismiss the suit, on the ground that it is barred by the statute of limitation. The appeal is therefore admitted, and the suit remanded to be disposed of on its merits. The institution fee to be refunded.

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THE 14TH APRIL 1851.

No. 17 of 1851.

*Appeal from a decision of the Moonsiff of Nema, Russickloll Bose,  
dated 16th December 1850.*

Seetaram Doss, (Plaintiff,) Respondent,

*versus*

Damoo Khutooah, and Modhoo Khutooah, heirs of Russick Khutooah, and Noaruttun Sasmul and Chuckooram Sasmul, heirs of Punganund Sasmul, deceased, (Defendants,) Respondents.

THIS is an action for a bond debt, laid at Company's rupees 290-1-10.

The plaintiff states that Russick Khutooah and Punganund Sasmul borrowed from his gooroo, Gopal Doss, Company's rupees 155, for which he gave a bond, bearing date 10th Assin 1250 Umlee, to be redeemed in the month of Phalgun following.

The defendants, Chuckooram and Noaruttun Sasmul, declare their utter ignorance of the transaction referred to by plaintiff, and plead that they are not liable for the deceased Punganund's debts, not having succeeded to his estate. The other defendants allow judgment to go by default. The moonsiff gives a verdict for the defendant. He observes that the four first lines of the tumusook are written with different ink and a different hand from the remaining portion of the bond; that the name of Seeboo Gere, one of the attesting witnesses, has apparently been added at some time subsequent to the execution of the deed, and finally that the plaintiff's witnesses swear that the loan was granted and money paid to defendants by plaintiff, which contradicts the averment of the latter, which declares that the deceased, Gopaul Doss, plaintiff's spiritual adviser, was the party who granted the loan.

The plaintiff, in appeal, alleges that the moonsiff's surmises are opposed to facts, and not warranted by the evidence on record, and demurs in reference to the testimony of the witnesses that the discrepancies are owing to the mohurir who recorded it, and to the oversight or collusion of his vakeel, who failed to examine the witnesses in a manner to remove all doubt who was the party granting the loan. The evidence of the witnesses has been taken in a careless manner, for instance they were asked if they are acquainted with both defendants *Oobhoy Bibadhee*, instead of whether they have any knowledge of both plaintiff and defendants. Again, they were asked a leading question whether the defendants took a loan from and gave a bond to plaintiff, or not, to which the witnesses reply in the affirmative in one place that the borrowers took from the mahajun, and in another that the borrower took from the plaintiff; but it is not elicited by cross-examination who the *Badee*, or plaintiff, really was. The witnesses might have, and no doubt did refer to

the lender, and it was incumbent on the lower court to ascertain this point. It is quite within probability that the witnesses understood plaintiff Badee and lender to be synonymous terms; at all events there is considerable room for doubt, and the moonsiff without sifting the matter further should not pronounce the witnesses unworthy of credit. Two of the defendants allow judgment to go by default, which is a tacit acknowledgment of the claim. The moonsiff makes no allusion whatever to this circumstance as regards the writing in which the bond is engrossed, the letters were not apparently all of the same size; but there is no difference in their formation nor in the color of the ink, certainly not such as to warrant the total rejection of the document, particularly as there are other circumstances in favor of its validity. For instance the date of the purchase of the stamp, which is one day previous to the execution of the bond. Sufficient pains have not been taken to arrive at the truth, I therefore admit the appeal, and remand the case for further inquiry.

The institution fee to be refunded.

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THE 17TH APRIL 1851.

No. 238.

*Appeal from a decision of the Moonsiff of Mohunpore, Gunganarain Mookerjee, dated 7th September 1850.*

Lala Seeromonee Roy, (Defendant,) Appellant,

*versus*

Musst. Bistoo Soondree Dibbea, (Plaintiff,) Respondent.

THIS is an action for possession of 20 beegahs of land, situated in chuck Neelgram, and to set aside a decision made under Act IV. of 1840.

The defendant pleads *inter alia* that the suit in its present form cannot lie, as the boundaries of the disputed patch have not been defined.

The moonsiff, in his decision, has neither alluded to nor disposed of the demurrers raised by defendant on legal points. The issue in bar of this action should have been settled at the preliminary inquiry; the plaint is defective inasmuch as the subject matter of claim is not described with certainty, that is, its boundaries have not been defined. It is not sufficient that the boundaries of the entire chuck in which the contested patch is situated have been stated, as it does not meet the requirements of Section 3, Regulation IV. of 1793. (*Vide* the Sudder Court's opinion recorded in decisions for the month of March 1850, page 43, Jyesunkur Doss and others, appellants, *versus* Ramkunnah Roy and others, respondents. The appeal is therefore decreed, with costs, and the plaintiff nonsuited.



THE 21ST APRIL 1851.

No. 1 of 1851.

*Appeal from a decision of the Sudder Ameen, Taruckchunder Ghose,  
dated 6th December 1850.*

Musst. Adur, mother of Hurreehur Doss and Hurnarain Doss,  
minors, (Plaintiffs,) Appellants,

*versus*

Brijomohun Mohapatur, Shama Churn Doss, and Anund Lall Doss,  
(Defendants,) Respondents.

THIS action is brought to set aside a deed of conditional sale of mehal Pudeenna, in possession of plaintiff in right of a deed of gift granted by the defendant Shama Churn Doss, husband of plaintiff, laid at Company's rupees 1000.

Plaintiff states that the defendant Shama Churn, whilst in jail at the instigation of, and in collusion with, this decreedar, sold mehal Pudeenna conditionally to the defendant Brijomohun Mohapatur, on the 21st Assin 1255 Umlee, and without her (plaintiff's) knowledge caused it to be registered; that as the mehal aforesaid has been in plaintiff's possession since 1251, in virtue of a hibanameh, the defendant Ram Churn had no power to alienate it, and the present suit is brought to render void the deed of sale.

The defendant Brijomohun Mohapatur demurs to the action on several legal points, and pleads that the deed of conditional sale was executed by the defendant Shama Churn in good faith, with a view to raise money to liquidate the claims of certain decreedars; that he gave the said Shama Churn a thousand rupees, in consideration of the deed of sale, which latter was duly signed, attested and registered. To nullify this deed the defendant Shama Churn has colluded with plaintiff in fabricating the hibanameh, the present cause of action.

The defendant Shama Churn Doss admits having signed the deed of sale, but denies having received any consideration for it. He pleads that defendant Brijomohun obtained possession of the deed in a fraudulent manner from his mooktear; that he sought the interference of the magistrate to recover it, but was unsuccessful. The other defendant, Anundloll Doss, reiterates Sham Churn's pleas.

The sudder ameen gives a verdict for the defendants. He is of opinion that the conditional transfer was made in good faith, and that the defendant Shama Churn received a valuable consideration in lieu of it. He attaches no weight to the pleas urged by the defendant Shama Churn, as he has never taken any steps to recover or set aside his deed (which he declares to have been taken from him surreptitiously) beyond filing a petition before the magistrate the allegations in which were proved to be unfounded, and made

after the deed had been duly registered. He remarks further that no objections were made to Brijomohun's kuballa by plaintiff, till three months after it had been registered, which would undoubtedly have been made at once had her title been good. He rejects the hibanameh as not supported by trustworthy evidence as the witnesses attesting it contradict themselves and each other. The dakhilas and seeahs are, he thinks, not in themselves evidence of possession: they refer to one or two kists in *one* year only, are not consecutive, and the former do not correspond with the seeahs, that is, the dakhilas are not vouchers of the payments recorded in the seeahs; that the circumstance of plaintiff's name having been recorded in the mutation register of the district is no detriment to Brijomohun's kuballa, nor does it strengthen the plaintiff's title as the present suit had been pending nine months when the order for the transfer of names was issued and therefore defendant might not deem it requisite to offer any objections, and lastly, that the plaintiff's hibanameh has not been registered, and that according to law the defendant's kuballa, which is registered, must have the preference and invalidate the hibanameh of the plaintiff.

I fully concur in the judgment recorded in the lower court independantly of the cogent reasons assigned for rejecting the hibanameh; there are others, which lead me to doubt the validity of that document: there are interpolations in it, the dates have perceptibly been inserted subsequent to the engrossing of the deed as the ink is quite a different color. The stamp paper on which it is written bears endorsement six months prior to date of deed in the name of a third party having no connexion whatever with those herein concerned. Had the gift been made *bonâ fide* "it is probable that the stamp would have been purchased at the time required, and by the parties interested in the transaction to be recorded. The decision of the lower court is affirmed, without serving notice on the respondents.

THE 22ND APRIL 1851.

No. 33.

*Original Suit.*

Raja Kishto Indernarain Roy, (Plaintiff,) Appellant,

*versus*

Ajodea Ram Mittre and others, (Defendants,) Respondents.

THIS action is brought to recover a balance of rent, with interest, laid at Company's rupees 21,878-5-1.

The plaintiff originally sued Debnarain Roy for arrears of rent for mehal Ahmedabad, and obtained a decree against his heirs Komul Monee and Sreenath Mittre, which was sued out and its execution is

still incomplete. In the mean time a dispute arose between the heirs and successors of the deceased Debnarain, which was finally disposed of on the 21st June 1848 by the Sudder Court, which ruled that

	<i>Share.</i>	the proportions indicated
Sreenath Mittre, .....	1-5th.	opposite their respective
Gunganarain (since dead,) his heir, ..	1-5th.	names. The decree of the
Mohendernarain (ditto) his heir, ...	1-5th.	plaintiff was in the interim
Kishen Govind, .....	1-5th.	put in execution as above
Peary Mohun (since dead,) his heir, ..	1-5th.	

stated, and on 31st August 1849 plaintiff applied for attachment of certain monies in deposit belonging to Sreenath Mittre and others, it was ruled by the court in conformity with the decision of the 21st June above quoted, that there were other heirs of Debnarain besides those specified in the plaintiff's decree and petition, and that consequently the attachment was informal and could not take effect. The plaintiff, seeing no other course open to him, now sues the defendants, heirs of Debnarain, for arrears of rent in proportion to their respective shares as indicated in the Sudder Court's decision.

The defendants reply that the suit is barred by Sections 12 and 16, Regulation III. of 1793, and urge other pleas against their liability which it is not necessary to enter on. The only issue it is requisite to notice without entering into the merits of the case is that raised by defendants in bar of the suit.

From the records of the case and from what has been urged on both sides it is clear that the defendants stand in the position of Debnarain deceased, as his heirs. The defendants acquired this status by a decree of the Sudder Court in appeal on the 21st June 1848. It was therefore incumbent on plaintiff that all subsequent steps in furtherance of execution of his decree should be taken with regard to this decision; his neglecting to do so was apparently the cause of his petition of attachment being rejected. The plaintiff could not plead ignorance of the Sudder Court's decree as it had been passed 14 months prior to the date of the said petition.

The question of the defendant's liability was matter of enquiry in a summary suit, and that it was not so is owing to the laches of the plaintiff.

The plaint in the present instance is opposed to law, and is barred as urged by defendants by the provisions of Sections 12 and 16, Regulation III. of 1793. The plaintiff is accordingly nonsuited; he paying all costs.

THE 28TH APRIL 1851.

No. 23.

*Appeal from a decision of the Moonsiff of Nema, Baboo Russicklall Bose,  
dated 24th December 1850.*

Nemai Churn Pudhan, (Plaintiff,) Appellant,

*versus*

Sadoo Senaputee and others, (Defendants,) Respondents.

THE plaintiff sues for a bond debt, laid at Company's rupees 142-10.

The defendants deny the claim, and plead that the plaintiff influenced by revengeful motives, and that their circumstances in life are such as to preclude the probability of the plaintiff lending them so large a sum of money as now claimed.

The moonsiff gives a verdict for the defendants, he observes that the bond has all the appearance of being a fabricated document; that it is engrossed in fresh ink after the creases, which are of long standing, had been made in the paper. He adds that the probabilities are likewise against its truth, the stamp endorsement is in favor of the third party residing in plaintiff's village; that the defendants are in indigent circumstances, had occasionally borrowed trifling sums from plaintiff; in one instance 8 rupees, two months before the bond the present cause of action, and it is therefore beyond the bounds of credibility that plaintiff should have lent defendants 75 rupees without any security whatever, and finally, that the attesting witnesses are not trustworthy.

In appeal, the plaintiff urges that the moonsiff's arguments are not justified by the records of the case and evidence adduced by him. On a review of the proceedings however, I see no reason to interfere with the moonsiff's decision, which, in my opinion, is fully borne out by the evidence, and it is accordingly affirmed, without serving notice on the respondents.

THE 30TH APRIL 1851.

No. 26 of 1851.

*Appeal from a decision of the Moonsiff of Culmeejole, Syud Imjad Alee,  
dated 16th December 1850.*

Mudun Mohun Chowdhry and others, (Plaintiffs,) Appellants,

*versus*

Kissore Mytee Ghose, (Defendant,) Respondent.

THE plaintiffs sue to recover certain offerings made in atonement termed Chandrayon; suit laid at Company's rupees 4-8.

The plaintiffs argue that they have a hereditary right to these oblations; but that defendants refused at the Chandrayon made at

the sun's eclipse in 1256 Umlee, to recognize that right, and gave their offerings to poorohits who had no title to them.

The defendants deny plaintiffs' title, and plead that the suit has been informally laid as the receiver of the offerings has not been made a party to it.

The moonsiff nonsuits for sundry laches in the plaint. It appears that the moonsiff has disregarded repeated instructions conveyed to him to record the issues to be tried. He has not held any proceeding in the present case as prescribed in Section 16, Regulation XXVI. of 1814. The appeal is admitted, and the case remanded that the omission may be supplied. The moonsiff will first enquire whether or not the present claim is barred by law or precedent, and then proceed, if necessary, to enter on the merits of the case. The cost of stamp to be refunded.

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THE 30TH APRIL 1851.

No. 27.

*Appeal from a decision of the Moonsiff of Kaseegunge, Khyrat Hossein, dated 17th December 1850.*

Sreenath Chackra, (Defendant,) Appellant,

versus

Doolaf Mytee, (Plaintiff,) Respondent.

THIS is an action to recover the value of five bundles of cotton thread, laid at Company's rupees 19-6-3.

The plaintiff alleges that the defendant borrowed from him five bundles of cotton thread promising to pay him the value of it the same day, failing in his promise the plaintiff now sues to recover.

The defendant in the first instance denies the cause of action *in toto*, but, in his deposition given before the moonsiff, he admits having received three bundles of thread, but pleads they were his own which he had entrusted to the plaintiff at Calcutta to bring home for him. The evidence of the witnesses for the prosecution tends to prove that on the 29th Bysakh 1257, the defendant borrowed from plaintiff five bundles of thread, stipulating to pay its value the same day; that in failure of defendant a dispute arose between him and the plaintiff, which was referred to arbitrators but without their coming to any final decision on the point further than giving their advice to settle the debt amicably. The defendant fails to disprove evidence in any particular, and accordingly the moonsiff gives a verdict for he plaintiff.

In appeal, the defendant urges nothing that should lead this court to interfere with the moonsiff's decision, which is hereby affirmed, without serving a notice on respondent.

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## ZILLAH MOORSBEDABAD.

PRESENT: D. I. MONEY, ESQ., JUDGE.

THE 29TH APRIL 1851.

No. 8 of 1848.

*Regular Appeal from the decision of Moulvee Syed Abdool Wahid Khan,  
First Grade Principal Sudder Ameen of Moorsbedabad.*

Unnopooruah Burmanah, widow of the late Haradhun Roy,  
(Plaintiff,) Appellant,

*versus*

Ramcoomar Roy, Sheebnath Roy, Bejoy Gobind Boral, Mudun Mohun Boral, Jadobunund Boral, Mudoosoodun Boral, Kallædoss Dhur and Sreenath Dhur, (Defendants,) Respondents.

SUIT for possession of her husband's and his brother's jumma and lakhiraj lands, with gardens, &c., situated in mouza MetEEPore, estimated value rupees 575-0-12½ g., and damages for loss of paddy, &c., rupees 220-13-5, total rupees 795, 13 a., 17 g., instituted 27th May 1845, and decided 30th March 1848.

The plaint sets forth that the plaintiff's husband Haradhun Roy, and his two brothers, Gooroopershad and Greedharee Roy, were joint possessors of all their ancestral property; that in 1234 B. S., they lived apart from each other, and divided the property in equal shares; that subsequently Haradhun Roy and Gooroopershad Roy lived together; that in 1236 B. S., Gooroopershad Roy willingly transferred to Haradhun Roy a jumma of rupees 26, 1 a., 15 g., 1 k., of mouza MetEEPore, and that he afterwards died, leaving the plaintiff's husband legal heir, as they had lived together, and that from that time he retained possession of his own and his deceased brother's share of the property.

In 1244 B. S. Haradhun Roy died, leaving the plaintiff with a daughter Ramdhun Burmanah, in possession of all his property as well as that of his brother Gooroopershad.

On the death of Greedharee Roy his son Ramcoomar Roy dispossessed her of all the jumma garden, tank, &c., for the recovery of which she has brought this action against the defendants.

The defendant Ramcoomar Roy pleads that Haradhun Roy and Gooroopershad Roy never lived together; that Haradhun Roy and his two brothers lived separately in possession of their respective

shares from 1231 B. S.; that Gooroopershad Roy died in the month of Bhadoon 1239 B. S., leaving a wife, and that his property could not come into the possession of Haradhun Roy; that on the death of Durpomye, the widow of Gooroopershad Roy, the defendant was the legal heir of the share of Gooroopershad Roy; that when the defendant was a minor the plaintiff's husband Haradhun Roy, with the connivance of the zemindar's amlah, procured the registry of his own name instead of that of Gooroopershad Roy in the zemindaree serishta; that the defendant is entitled to the possession of his father's as well as his uncle Gooroopershad's share, and the plaintiff only to her husband's share 5 a., 6 g., 2 c., 2 k., which she still possesses.

The plaintiff, in replication, supported her plaint.\*

The principal sudder ameen took a bewustah from the late pundit of Moorshedabad, and deputed an amlah to make an enquiry, whether Haradhun Roy and Gooroopershad Roy lived together or not, and satisfying himself from his report that they lived apart, according to the bewustah of the pundit, decreed for the plaintiff her husband's share 5 a., 6 g., 2 c., 2 k., and half, and the share of Gooroopershad Roy, viz., 2 a., 13 g., 1 c., 1 k., with *wasilat*.

The plaintiff, in appeal, from this decision urges chiefly that it was proved by the evidence of her witnesses that her husband Haradhun Roy and Gooroopershad Roy lived together, and Greedharee Roy, the defendant, Ramcomar's father, separate; that the naib nazir deputed by the principal sudder ameen did not take the evidence of people in the neighbourhood; but only of the relations of the defendant, and that the principal sudder ameen without due consideration of this point decided the case partly in favor of the defendant, whereas according to the bewustah of the pundit, she was entitled to the possession of the whole of her husband's and his deceased brother (Gooroopershad Roy's) shares.

This suit was transferred to the principal sudder ameen from the sudder ameen's court; but the proceeding under Section 10, Regulation XXVI. of 1814, was drawn up by the sudder ameen, and there is an irregularity in this proceeding, which the principal sudder ameen has omitted to notice, and which he should have corrected before he proceeded to adjudicate on the merits of the case. The sudder ameen specifies and calls for certain exhibits from both parties, instead of taking such evidence as either party might adduce on points requiring to be established by them respectively. As this is opposed to the requirements of Section 10, Regulation XXVI. of 1814, Clauses 3 and 4, and the provisions of Circular Order of the 13th September 1843, the appeal is admitted, and the case will be remanded to the principal sudder ameen for re-trial with reference to these remarks. The stamp fee on the petition of appeal to be returned to the appellant.

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THE 29TH APRIL 1851.

No. 14 of 1848.

*Regular Appeal from a decision of Moulvie Syed Abdool Wahid Khan,  
Principal Sudder Ameen of Zillah Moorsshedabad.*

Kasheesury Dibbea, (Defendant,) Appellant,

versus

Radha Bullub Chukerbutty, and after his decease, his wife, Ishoree  
Dibbea, (Plaintiff,) Respondent.

SUIT for the annulment of a hibehnama, dated 12th Bysack 1250 B. S., and possession on the ground of inheritance of moveable and immoveable properties to the amount as valued by the plaintiff of rupees 4992-10-7.

The plaintiff states that his grandfather Juggernath Chukerbutty had two wives and three sons, viz., Radhamohun Chukerbutty, father of the plaintiff by the first wife, and Rudanath Chukerbutty and Luckenath Chukerbutty, his uncles, by the second wife.

On the death of Juggernath Chukerbutty his three sons took possession of their paternal property, real and personal.

Radanath Chukerbutty at his death left a son, Kristonath Chukerbutty, who, with the second wife of the deceased Kasheesury Dibbea, took possession of the property of his father, and of his uncle Luckenath Chukerbutty, who died without issue. The plaintiff came into possession of his father's property upon his decease.

On the 14th Bysack 1250 B. S., Kristonath Chukerbutty died without heir, leaving his property to the plaintiff, who, according to the Hindoo shastras, performed the usual funeral ceremonies, took possession of his property and began to maintain his step-mother Kasheesury Dibbea, meanwhile Kasheesury filed a petition before the sudder ameen, declaring herself to be the mother of the late Kristonath, and praying that a decree passed in his favor should be executed and the amount paid over to her.

The plaintiff opposed the claim, on the ground that he, and not Kasheesury, was the real heir of Kristonath. Upon this Kasheesury, in conjunction with Hurrymohun, filed another petition, contradicting the former in which she alleged that by a hibehnama, or deed of gift of the late Kristonath, Hurrymohun was entitled to the possession of the whole of his property, moveable and immoveable, together with the thakoorpoojah. But as the hibehnama was not registered nor authenticated by the seal of the cazee, the sudder ameen ordered that the money decreed should remain under attachment until a claim was established under Regulation IV. of 1798. Kasheesury then presented a petition to the magistrate, dated 32nd Assar 1251 B. S., praying to be allowed to undertake the thakoorpoojah in turn. Chundermohun Baboo, late deputy magistrate of this zillah, went to



the spot, and, without further, enquiry gave her permission, and she, taking advantage of the order, deprived the plaintiff of the whole of the property of Kristonath, both moveable and immoveable, together with the thakoorpoojah, therefore the plaintiff brought this suit against Kasheesury and others.

Kasheesury Dibe defendant, in her answer, admits the genealogy of the family as stated by the plaintiff. She pleads that Kristonath Chukerbutty, her stepson, on the 12th of Bysack 1250 B. S., being at the point of death, bequeathed the whole of his property, real and personal, to Hurrymohun Chukerbutty, one of his relatives, by a hibehnama, on the condition that he should support the defendant Kasheesury, and not dispose of any of the property therein mentioned till her death; that on the 14th Bysack 1250 B. S., Kristonath died, and she performed the funeral ceremonies at her own expense; that the plaintiff had no right according to the Hindoo shastras to perform them while she was alive; that being in possession of Kristonath's property, she discharges the thakoorpoojah in town, that is, 7 days in a month; that the hibehnama was not registered, because Kristonath died the day after its execution; that the plaintiff has purposely made the witnesses to the hibehnama defendants in the suit.

The plaintiff, in replication, denies the right of both Kasheesury and Hurrymohun to the property of Kristonath, and states that if Kristonath gave his property to Hurrymohun, he could not leave the same to the defendant. As this was contrary to the Hindoo law, the hibehnama, under such circumstances, would be of no value, the deed is not drawn up by Radhakanth Bhuttacharj, the pleader of the plaintiff, and is forged. The plaintiff stated that Rajah Kristonath had from the time of his ancestors a jote of 4 r., 14 a., 13 g., 2 c. under him.

The defendant did not put in a rejoinder.

The principal sudder ameen, on the 24th February 1848, gave a decree, with costs in favor of the plaintiff, and annulled the hibehnama on the ground that though it was proved by the witnesses of the defendant, still it was not trustworthy as it was neither registered nor sealed by the kazee, nor proved in any court, and because in a decree-jaree case the defendant at first brought only two witnesses, and not the hibehnama, before the sudder ameen, to prove herself the heir of the late Kristonath, and had the hibehnama been genuine, she would have produced it at once and not afterwards. The principal sudder ameen further states that the price of the moveable properties is not proved by the evidence of the witnesses, and that according to the bywusteh of the Hindoo law officer the plaintiff is entitled to the possession of the property of the late Kristonath Chukerbutty, he therefore decrees to the plaintiff right and title to the thakoorpoojah, and to the possession of the property both real and personal of the late Kristonath Chukerbutty, and that

Kasheesury Dibbea defendant shall be maintained by the plaintiff during her lifetime.

The defendant appeals to this court nearly on the same grounds as those urged in his defence in the lower court, with the exception of the statement that the case was disposed of by the principal sudder ameen after the plaintiff's death.

The plaintiff in this suit made Rajkissen Mookerjea, Ramgovind Bagchee, Ramdhun Banerjea, Gopeenath Shaha, Purusnath Mookerjea and Bykaunth Dhur, defendants, and they were the attesting witnesses to the hibehnama, the principal document upon which the other and chief defendants Kasheesury Dibbea and Hurry Mohun Chukerbutty rested their right and title. The latter defendants in the answer objected to this, and agreeably to the decision of the Sudder Dewanny Adawlut of the 11th August 1847, in the case of Ramlochun Ghose, appellant, (plaintiff) *versus* Goorooopurshad Ghose and others, respondents (defendants,) the principal sudder ameen should have nonsuited the case; instead of this he permits the plaintiff by a subsequent proceeding to withdraw these defendants and yet, in his decree, they are still included as defendants. He was also irregular in attaching the hibehnama at the request of the plaintiff, and in his proceeding drawn up according to Section 10, Regulation XXVI. of 1814 in sending for it, and after inspection recording its substance in his final proceedings, instead of releasing the document from attachment, and allowing the parties an opportunity to file it. *Vide* decision of the Sudder Dewanny Adawlut of the 5th July 1847, on the petition of Sheikh Imdad Alli and others.

The appeal is therefore admitted, and the case will be remanded to the principal sudder ameen with reference to these remarks. The appellant to receive back the stamp fee on the petition of appeal.

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## ZILLAH MYMENSING.

PRESENT : R. E. CUNLIFFE, ESQ., JUDGE.

THE 1ST APRIL 1851.

No. 16 of 1849.

*Appeal from a decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated 28th January 1850.*

Gourypershad Surmah Mojoomdar, (Defendant,) Appellant,  
and

Sheebpershad Surmah Chuckerbuttee, Defendant,

*versus*

Rogoonath Chund, (Plaintiff,) Respondent.

RESPONDENT sued to obtain possession, with wasilat, of the lands detailed in the plaint, which he had purchased from appellant in 1249, under deed of conditional sale, and of which foreclosure had been effected.

The other defendant alleging that the conditional sale to respondent was a fraudulent transaction between him and his master: the appellant claimed the property under a deed of sale, dated 6th Chyete 1253.

Appellant also filed an answer, but having failed to prove the alleged cause of delay in filing it, and which he was called upon to do in five days on the 4th September 1849, it was rejected on the 8th December of the same year.

In appeal, it was urged, that he was only called upon to prove the cause of delay eight days before the courts closed for the Dusserah vacation, and that he was then a day and a half's journey from the court, and received information of what was required after the courts closed; but after the courts opened he sent (to whom is not stated) a list of witnesses, which could not be filed as the principal sudder ameen was absent on leave; that the court opened on the 3rd of December, and his answer was rejected on the 8th. The point for decision is, was the appellant guilty of such neglect as justified the principal sudder ameen in rejecting his answer, I am of opinion that he was. He says he was at a day and half's journey from the court, but did not receive information of what was required till after the courts closed, that is, for at least eight days, for which no reason is assigned, and the eight days before the courts closed was ample time for him to have filed a list of witnesses even if he was a day and half's journey distant. He

also asserts he sent a list of witnesses after the courts opened, which could not be filed as the principal sudder ameen was absent; but he assigns no reason why it was not filed on any of the five days the court was open before his answer was rejected. Had the list of witnesses been entrusted to his vakeel it would have been filed, I therefore disbelieve the assertion that it was ever sent. Appellant has filed a copy of an answer in another case, which was admitted by the principal sudder ameen on proof of cause of delay, that has nothing to do with this case, and only shows that he was not so neglectful of his own interests in that case as he has been in this. The appeal is dismissed, with costs.

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THE 1ST APRIL 1851.

No. 26 of 1850.

*Appeal from the decision of J. Weston, Esqr., Additional Principal Sudder Ameen of Zillah Mymensing, dated 20th March 1850.*

Bagruttee Dibbea Chowdryne, (Plaintiff,) Appellant,

*versus*

Mahomed Fuzuloollah, No. 1, Mahomed Futtehoollah, No. 2, and Mahomed Khuleeloollah, No. 3, (Defendants,) Respondents.

APPELLANT sued to recover rupees 434-2-3, rent due to her as proprietor of 2 annas share of pergunnah Mymensing, on 8 arras  $5\frac{1}{2}$  cottahs, which the respondents cultivated without having entered into any engagement with her, laying her claim from the 11th Bysack 1246, when she issued a notice upon the defendants according to the provisions of Sections 9 and 10, Regulation V. of 1812, at the rate of rupees 7-2 per arra.

Respondent No. 1 denied having cultivated the land, and alleged he had separated from his brother, respondent No. 2, who, in his answer, denied the service of the notice, but admits that on the 25th Bysack 1245, he engaged in the name of his servant Beram, for 4 arras, 1 cottah, at 1 rupee per arra, with the farmer of one of appellant's co-sharers, and that he is willing to pay her at that rate. The other respondent did not file an answer.

The additional principal sudder ameen dismissed the claim, not considering the service of notice proved, adding that the dismissal shall not be held to bar appellant's claim to recover any arrears that might be due to her from respondents according to their former jumma.

The suit must be remanded for trial, for it was unnecessary to enquire whether the notice had been duly served or not as in such a case issue of notice was not required. Sections 9 and 10, Regulation V. of 1812, refer to enhancement of rent, this is a claim not for enhancement, but for arrears of rent of land cultivated without entering into engagement with the proprietor and the additional principal sudder ameen's order that the dismissal will be no bar to

a suit for arrears according to respondents' former jumma is erroneous, for no jumma has been agreed upon between them and appellant. On referring to the proceeding under Section 10, Regulation XXVI. of 1814, I find that no proof of respondent No. 1's assertion that he did not cultivate the land, and that he had separated from respondent No. 2, has been called as was necessary, this will accordingly be done, as well as respondent No. 2 be called upon to take measures for the attendance of the witnesses named by him after which the principal sudder ameen will decide the case on its merits.

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THE 1ST APRIL 1851.

No. 30 of 1850.

*Appeal from the decision of J. Weston, Esq., Additional Principal Sudder Ameen of Zillah Mymensing, dated 25th March 1850.*

Radamohun Shadea, (Defendant,) Appellant,

*versus*

Chunderkishwur Dutt, (Plaintiff,) Respondent.

RESPONDENT sued the appellant for rent appertaining to an estate purchased by him at auction sale, and the additional principal sudder ameen has decreed a portion of the sum claimed. It is unnecessary to enter into the merits of the case as I find that no proceeding whatever has been held according to Section 10, Regulation XXVI. of 1814. The suit is therefore remanded for trial after holding the proceeding required by the Regulation quoted.

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THE 1ST APRIL 1851. .

No. 75 of 1849.

*Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated 10th August 1849.*

Chundernarain Chuckerbuttee, (Defendant,) Appellant,

*versus*

Bykaunt Doss and others, (Plaintiffs,) Respondents.

THIS suit to obtain possession of talook Shamchunder Chowdry, in mouza Gojadea, was remanded for trial by me on the 22nd May 1849, having overruled the decision of the officiating principal sudder ameen, Moulvee Ameeruddeen Mahomed, that the suit was barred by lapse of time, and it is now unnecessary to enter into the merits of the case as I find that no proceeding whatever has been held under Section 10, Regulation XXVI. of 1814. The appeal is accordingly decreed, and the suit remanded for trial after taking the steps prescribed by the Regulation quoted.

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THE 4TH APRIL 1851.

No. 31 of 1850.

*Appeal from the decision of J. Weston, Esq., Additional Principal  
Sudder Ameen of Zillah Mymensing, dated 30th March 1850.*

Mr. Courjon, (Defendant,) Appellant,

*versus*

Mr. Sandes, receiver of the estate of Mrs. Hume and others,  
(Plaintiffs,) Respondents.

RESPONDENT sued to recover possession of about 2 poorahs 12 arras of land in Bund Rungamatea and Chota Beel, mouza Mahomed Nugger, pergunnah Hooshunshahye, and to reverse an order under Act IV. of 1840, giving possession to appellant as appertaining to his estate, pergunnah Durzeebazoo. It is unnecessary to enter into the merits of the case as the proceeding required by Section 10, Regulation XXVI. of 1814, has not been held. On the 28th March 1848, the officiating principal sudder ameen after rejecting the objection that the suit was barred by lapse of time appointed an ameen to measure and ascertain to which estate the lands belonged. On the 29th October 1849, the additional principal sudder ameen after recording that the officiating principal sudder ameen had only partially conformed to the provisions of Section 10, Regulation XIV. of 1826, and not at all to those of Section 12, of the same Regulation, ordered that the roobukaree of the 28th March 1848, should be amended and a proceeding held under Section 12; but nothing further was done. There is also a roobukaree of the 16th November 1849, permitting respondents at their request to file certain documents, although proofs had not been called for from the respective parties, which is a further admission that no proceeding had been held under Section 10, Regulation XXVI. of 1814. The suit is accordingly remanded for trial by the principal sudder ameen after carefully recording the points to be established by the respective parties.

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THE 4TH APRIL 1851.

No. 32 of 1851.

*Appeal from the decision of J. Weston, Esq., Additional Principal Sudder Ameen of Zillah Mymensing, dated 30th March 1850.*

Bhyrub Chunder Chowdry, (Plaintiff,) Appellant,  
*versus*

Brijmohun Dutt Sirdar and Kobeenarain Dutt Sirdar, (Defendants,) Respondents.

APPELLANT states that the respondents previous to the butwarra of the 8 anna zemindaree of pergunnah Mymensing, were in possession of 2 arras dewuttur and 6 arras lakhiraj in mouza Monhur under 2 sunnuds, one of 1195 and one of 1196, granted by Hurnath Chowdry a 4 anna shareholder, and that on the butwarra of the 8 anna zemindaree these lands, as the grant of ijmalee land by one shareholder is invalid were not recorded as lakhiraj, and the mouza falling into his father's share in the butwarra, he sued for possession and was nonsuited on the 24th January 1820, and on a further butwarra between appellant and his brother the alleged lakhiraj having fallen into his share, he now sues to resume it, and 8 arras more, which the appellants have possessed themselves of under the same plea, on the grounds that grants of ijmalee lands by one shareholder are invalid, and all grants subsequent to 1172 are so.

Respondents, in answer, alleged that the suit was barred by lapse of time as they had been in possession for 59 years; that the grants were valid; that when the appellant's father sued them he stated it was the custom of the zemindaree that when lakhiraj was granted by one shareholder the other shareholders were entitled to so much land elsewhere, and although their ancestor had made a brick kiln in a jungly spot near their lakhiraj; they do not object to the appellant taking possession of it, and that appellant admitting the boundaries sue to resume 16 arras, which cannot be correct as they have only 8 arras lakhiraj.

Appellant replied that the map and proceedings of the ameen in the case, which had been nonsuited, showed that respondents were in possession of 13 arras, 3 cottahs, 3 gundahs.

The officiating principal sudder ameen decreed for 8 arras only, and both parties having appealed the suit was remanded for trial by my decision of the 11th July 1849.

The additional principal sudder ameen rejected the objection that the suit was barred by lapse of time, as not applicable to suits for resumption, and the evidence of appellant's witness that the respondents had possession of 8 arras, in addition to their alleged lakhiraj, as their statements are at variance with the plaint inasmuch as it states that they took possession thereof from 1238 to 1248, and from the tenor of the evidence he infers it was done in



one year; that the ameen only found 13 arras, 3 cottahs, 3 gs., on measuring the land pointed out by appellants, and did not enquire who was in possession of it, and that if respondents had taken possession of it appellant would have sued them long ago for possession. Both the sunnuds he considers as valid, because appellant does not allege they are forgeries or fraudulently recorded in the collectorate; but on the contrary admits as did his father their validity (which they never did,) and that appellant's objection that all grants after 1172 are invalid, does not avail him as it is enacted by Section 17, Regulation XIX. of 1793, that all grants of land dated prior to the 1st December 1790, which may appear to be forged or altered shall be adjudged null and void, and that this is not the case with those of respondent.

In appeal, it was urged that the sunnuds are invalid for the reasons assigned, and that the possession of respondents—if the land measured by the ameen is recorded in the map, which was measured before both parties, and that the evidence of his witnesses is not at variance with the plaint.

The points for decision are—Are the sunnuds valid or not, and are the respondents in possession of 8 arras in excess of that recorded in the sunnuds. On the 1st point, there can be no doubt that they are invalid for all grants of lakhiraj made since the 12th August 1765, and previous to the 18th Aughun 1197, or 1st December 1790, which may not have been confirmed by Government are declared invalid by Clause 1, Section 3, Regulation XIX. of 1793, and these sunnuds fall within that period. The Section 7, quoted by the additional principal sudder ameen, does not rescind the above very clear enactment, but is applicable to all sunnuds whatever dated prior to the 1st December 1790, which may appear to have been forged or altered. With regard to the 2nd point, after perusal of the evidence of the witnesses of both parties, I do not consider there is that discrepancy between the plaint and the appellant's witnesses as to justify a dismissal of his claim to the amount of land measured by the ameen in excess of the quantity stated in the sunnuds. In their answer the respondents do not distinctly deny possession of any land in excess of their sunnuds, but only state that appellant admitting the boundaries allege them to contain 16 arras, which cannot be the case as their sunnuds are only for 8 arras. On comparing the boundaries set forth by both parties such does not appear to be the case, besides which on the plots of land in excess of the sunnuds it is recorded on the map that the respondent's mooktear asserted they had been cultivated by degrees by the appellant. If such was the case it is strange that the fact was not stated in the answer, and evidence adduced to prove when and by whom that land had been cultivated by the appellant. The decision of the additional principal sudder ameen is reversed, the sunnuds of respondents declared invalid,

and appellant entitled to rent from the quantity of land, viz. 13 arras, 3 cottahs 3 gs. found by the measurement of the ameen to be in possession of respondents, with costs in proportion to the claim established.

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THE 4TH APRIL 1851.

No. 38 of 1850.

*Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated 6th May 1850.*

Indromye Dassea and others, with the exception of Sursatec Chowdryne, (Plaintiffs,) Appellants,

*versus*

Jewun Kishen Ray and others, (Defendants,) Respondents.

APPELLANTS sued to obtain possession with wasilat of about 27 khadas, 11 pakees, 2 cs. of land, and state that the boundary between their mouza Boozoorg Dowlutpore, and respondents' mouza Singorea was the Lajun Nuddee, the former being on the east and the latter on the west; that the river is now dry in the dry season, but flows in the rains, having been filled up by the overflow of the Jomoona river; that Cazeepara, in the above mouza, was carried away by diluvion from 1228, and in its place a chur was formed from 1230, of which they had possession, cultivated it from 1231, and placed ryots upon it from 1233. That respondents, saying they had purchased 10 gundas of mouza Singorea, took kubooleuts by force from Sheik Mega and others, and the respondents' people were fined, but on appeal both parties were referred to the civil court, and that about 3 years afterwards on the respondents' petition a suit was instituted under Act IV., and the magistrate gave respondents possession according to the boundary made by the present Lajun Nuddee; that their possession is proved by the enquiry made by the darogah of Serajunge, dated 29th Assar 1234, as also by the complaint made by Sheik Mega and others, and that the person from whom respondents purchased never had possession, and that the magistrate has improperly referred, in his decision, to a suit under Regulation XV. of 1824 between them and the talookdars of Adabaree as that was regarding other lands. The respondents also alleged the Lajun to be the boundary, but where it now flows, and have possession as had the former proprietors; that the appellants had a dispute with the talookdars of Adabaree, which adjoins Singorea on the north, and their claim was dismissed, thus fixing the river as the boundary; that the appellants sued Kamal Sircar and others, ryots of the land in dispute, in the Pubna court, under cover of which they forcibly seized their property, and that summary decision was reversed by the principal sudder ameen, 8th May 1847, from which one of the appellants instituted an appeal, which was struck off on default; that the appellants fraudulently caused the

enquiry in a case of arson to be made by the darogah of Serajgunge, while the mouzas of the parties are respectively in Mudoopore and Pingna thannas; that the case of Sheik Mega is no proof of possession, and his witnesses say the Lajun is the boundary.

The principal sudder ameen dismissed the claim as the appellants had not been able to adduce any documentary proof of possession; that the kubooleuts of Ganreenath Sircar of 1842, on the part of an indigo planter, has not been attested, nor does it appear to have been proved before any authority; that Natoo, copy of whose deposition has been filed, is a resident of Boozoorg Dowlutpore, and their witnesses are low people, while the witnesses of respondents are talookdars, &c.; that the documents filed by the respondents prove that the existing Lajun river always has been the boundary, and that the maps made by two ameens deputed by the court, before respectable persons, prove that there is no trace of the bed of a river where the appellants state the river to have flowed formerly; that the enquiry into the case of arson, &c., made by the darogah of Serajgunge, is a suspicious circumstance, as the mouza of neither party is in that thanna; that the petitions of the appellants' ryots cannot be considered proofs, nor does it appear that the matters they refer to were ever investigated, and that the map made by the khas ameen was made in collusion with the appellants in the absence of the respondents for having been recalled and another ameen appointed; he appealed, and, before receiving further orders, proceeded to make the map.

In appeal, it was urged that Ganreenath's kubooleut was proved, and the deposition of Natoo was given before the respondents' purchase; that appellants' witnesses are respectable persons and those of the respondents are not talookdars; that the depositions of Zeratee and Ameer and the plaint of Azmut and Natoo can be no proof on the respondents' part, as the case was only to cancel a summary order, and that Azmut's father in the foudaree case filed a petition, stating the land in dispute belonged to the appellants; that the respondents' witnesses are his dependents, and disagree in their statements; that Goluck Chunder Sein, ameen, recorded on the map that the land was a chur; that the other ameen, Goureesunkur, was a dismissed vakeel, who had been committed to the sessions; that the investigation made by the Serajgunge darogah was by order of the magistrate; that the khas ameen had prepared the map before Goureesunkur, ameen, was appointed, and reported that the respondents would not sign it on the 28th March, and that the principal sudder ameen appointed another ameen without any order upon his urzee. The point for decision is to which of the two mouzas the land in dispute belongs. I consider the evidence preponderates in favor of the respondents. The appellants assert they placed ryots on the land from 1233, and the evidence of their witnesses shows that they amounted to at least sixteen

persons, none of whose kubooleuts have been adduced, and on referring to the roobukaree of the magistrate, in which this suit originates, the proceedings in which case were burnt in the sudder ameen's cutcherry, I find only four kubooleuts were filed in that case, the appellants therefore might have adduced the kubooleuts of the other ryots and their chittas. Although the investigation of the darogah of Serajgunge into the arson case must have been made by orders of the magistrate, it being unusual to depute a darogah in such a case, whose jurisdiction does not even adjoin (there is a very large river between) appellants should have shown how it had arisen and the result of the investigation, which, however, would be no conclusive evidence of possession as it was *ex parte* and only in a case of arson. Appellant states Goureenath Sircar's kubooleut was proved, but such is not the case; that respondents' witnesses are not talookdars, all certainly are not, but several have stated themselves to be such, and if they were not they should have been questioned when their depositions were taken. Objections are made to the map made by Goureesunkur, because he is a dismissed vakeel and had been committed to the sessions. So much is true, but appellants have not told the whole truth; he was acquitted of the crime for which he had been tried by the Nizamut Adawlut, and holds a proceeding of that Court; that he is not barred from further employment. In appeal, it is not stated that Goluckehunder and Goureesunkur ameens made their maps in their absence for their mook-tear's statements are recorded thereon, notwithstanding which they very improperly and doubtless with a fraudulent intent did not sign them, proof of which is that a petition was filed by Nowcowree Sircar, on the part of appellant, stating the first ameen had made the map in collusion with respondents, without going to the ground; that the map made by the khas ameen was in collusion with the appellants is evident. He was re-called from the business and ordered to send in his papers, which he improperly did not do; but appealed from the principal sudder ameen's order, who was directed, if the matter had not been concluded, to employ the khas ameen, who, as he says, having heard from a peadah of his, what order had been passed, without waiting for a perwannah from the principal sudder ameen, made a map in the absence of respondents and sent it in without loss of time. Appellant states the khas ameen had prepared the map before Goureesunkur ameen was appointed, which I cannot believe, for if he had, he would, if it was only to show he had not been dilatory, have sent it when re-called by the principal sudder ameen. Under these circumstances I see no reason to interfere with the decision of the principal sudder ameen, which is affirmed, with costs.

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THE 5TH APRIL 1851.

No. 35 of 1850.

*Appeal from the decision of Pundit Nurhurree Seromonee, Principal  
Sudder Ameen of Zillah Mymensing, dated 15th April 1850.*

Rajah Hurindurnarain Ray, (Plaintiff,) Appellant,  
*versus*

Ramakaunt Majoomdar and others, (Defendants,) Respondents.

APPELLANT states that his grandfather was proprietor of the zemindaree of pergunnahs Pookkarea and Zynshahye, and gave 4 annas to his cousin Kishenindernarain Ray, and was succeeded by his mother Bubun Mye, and after he came of age she gave his nephews Govind Khan and others 2 annas of it, and of the remaining 10 annas she had possession of  $7\frac{1}{2}$  annas, and he of  $2\frac{1}{2}$  annas, and she having died on the 6th Sawun 1254, he is in possession of the 10 annas share; that the respondents are in possession of mouza Gopalpore, &c., under an alleged merasee ijara, and sues to assess it, stating that his grandfather Govindernarain sued the zeemadar for arrears of rent, when an order was passed by the Sudder Dewanny Adawlut that he would receive rents according to the pergunnah rates, and, if disputes arose, it would be settled by the courts: accordingly his mother and the 4 annas proprietor sued to assess, when the defendant Radakaunt Majoomdar agreeing to pay rupees 400 in excess of the former jumma; a ruffanamah was filed by him and appellant's mother, and the suit decided accordingly. Appellant now sues to assess the jumma as he is not bound by any arrangement entered into with his mother.

Respondents replied that the jumma before the decennial settlement was rupees 1640-13-9, and on the sudder jumma of the zemindaree being increased they agreed to pay the increased jumma stated by appellant, and that the suit cannot be entertained by Construction No. 1129; that it is also barred by lapse of time, upwards of 28 years having elapsed since the suit decided by ruffanamah was decided; that the appellant cannot dispute the act of his mother as he has admitted her gift of 2 annas of the estate of Govind Khan, &c., and thus her right to alienate; that no notice under Sections 9 and 10, Regulation V. of 1812 was issued; that the suit ought to have been to establish right to assess, and afterwards on issue of notice the suit to assess.

Appellant, in reply, referred to a decision of the Sudder Dewanny, dated 20th May 1848, Shuffaitollah, appellant, *versus* Jykishen Mokerjea, that the rule of limitation of time for institution of suit did not apply, and that notices had been duly issued.

The principal sudder ameen dismissed the claim, on the grounds that it being admitted by both parties that a former suit to assess the jumma of the talook instituted by appellant's mother had been settled by a ruffanamah between her and the defendant in that

suit, which fixed the jumma at rupees 2040-13-9, although by the shastras, women have only an imperfect interest in property, still since appellant admits in the plaint that the respondents have paid him rent at the rate fixed by the ruffanamah entered into with his mother, by receiving it he must be considered to have confirmed that act, and by the prachitutta dirtto, kytanmunnee buchun and the dytatta, which are current in Bengal, he cannot claim an increased rent from the respondents.

In appeal, it was urged that the principal sudder ameen had decided the case on other grounds than those recorded in the proceeding under Section 10, Regulation XXVI. of 1814, as the points for decision, and that no istehar had been issued in conformity to Section 12 of the same Regulation, and that the principal sudder ameen ought to have stated what are the buchuns on which his decision is founded. The suit must be remanded for trial, for though in the roobukarree under Section 10, Regulation XXVI. of 1814, the parties were called upon to prove that such a suit could or could not be entertained, it can only have reference to the pleas set up by them. The respondents state three reasons why the suit cannot be entertained. First, as contrary to Construction No. 1129. Secondly, barred by lapse of time, Thirdly, that appellant cannot claim or act contrary to his mother's engagement with them, because he had admitted another act of her's, viz., the gift of 2 annas of the estate to Govind Khan. If the principal sudder ameen had any doubts whether the suit could be entertained as being opposed to the Hindoo law he ought to have recorded that as a point for decision in the roobukarree under Section 10, which would have afforded both parties an opportunity of adducing proofs on that point in support of their side of the question, such as precedents of the Sudder Dewanny, &c.

The istehar required by Section 12, ought to have been issued, and the principal sudder ameen ought also to have quoted the buchuns on which his decision is founded for ready reference in the event of a reference to the pundit of the division being necessary.

The suit is accordingly remanded for trial, in which the principal sudder ameen will bear in mind the observations recorded above.

### THE 5TH APRIL 1851.

No. 33 of 1850.

*Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated 15th April 1850.*

Rajah Hurindernarain, (Plaintiff,) Appellant,

*versus*

Ruttungopal Badooree and others, (Defendants,) Respondents.

APPELLANT states that his grandfather was proprietor of the zemindaree of pergunnahs Pookerea and Zynshahye, and gave four

annas of it to his cousin Kishenindernarain Ray, and was succeeded by his mother Bubunnye Dibbea, and after he came of age she gave his nephews Govind Khan and others, 2 annas of it, and of the remaining 10 she had possession of  $7\frac{1}{2}$  annas, and he of  $2\frac{1}{2}$  annas, and she having died on the 6th Sawun 1254, he is in possession of the 10 annas share; that his mother and Kishenindernarain Ray sued to assess the talook of Hurgopaul Badooree and others, in mouza Srebrampore, &c. and obtained a decree to that effect in the judge's court, and the Badoorees having appealed, an ameen was deputed by the court of appeal; but in the mean time the Badoorees knowing the jumma was not a fixed one, and that the Sudder Dewanny had ordered another talook Madarjanee, &c., to be assessed, together with his mother, filed a ruffanamah, agreeing to an increased jumma of rupees 55 4 gundahs, according to which the suit was decided on the 27th Jyte 1234. He now sues to assess the jumma of the talook not being a fixed one, and that his mother, having only an imperfect interest in the estate, that is, was only entitled, to the profits, he is not bound by any arrangement made by her. The respondents, who appeared, alleged that appellant's mother was proprietor of 12 annas of the estate, and that the engagement entered into with her is binding upon the appellant, who also has taken rent from them at the rate fixed thereby, and that he ought to have sued separately according as their shares have been entered in the zemindaree sherishta.

Appellant admitted, in reply, that the shares were entered separately in his sherishta, and has sued all jointly as the land is held ijmalee. It is unnecessary to enter further into the case to record the grounds on which the principal sudder ameen dismissed the claim on the grounds of appeal, as the proceeding required by Section 10, Regulation XXVI. of 1814 has not been properly drawn up, the points to be established by the respective parties not having been distinctly recorded, the suit is accordingly remanded for trial after correction of the omission noted.

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THE 7TH APRIL 1851.

No. 37 of 1850.

*Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated 25th April 1850.*

Rajah Hurindernarain Rai, (Plaintiff,) Appellant,

*versus*

Aradhunee Dassea, No. 1, and Nubeenchunder Deb, No. 2,  
(Defendants,) Respondents.

APPELLANT sued to recover rupees 588-9-6, rent with interest for 1254 from the respondents, on account of a talook in his zemindaree purchased by respondent No. 1, in the name of her servant No. 2.

Respondent No. 1 denied having so purchased it or being in possession of it.

Respondent No. 2 did not enter appearance.

The principal sudder ameen dismissed the claim against respondent No. 1, as appellant had filed no documentary proof of her possession or purchase, and that such a matter cannot be decided on the evidence of witness alone, and that appellant's witness says respondent No. 2, was in possession.

In appeal, it was urged that in a case of benamee purchase it is nearly impossible to adduce documentary proof of possession, and respondent No. 1's purchase and possession have been fully proved by his witnesses, among whom are two of her mooktears, and that being much in debt she had fictitiously made over other talooks for the maintenance of an idol, which act was cancelled on the suit of Bheemchunder Sha to whom she was indebted. The point for decision is whether the purchase in the name of respondent No. 2 was really that of respondent No. 1. After perusal of the evidence of the witnesses adduced by appellant, among whom is a person, who was for several years in her service and another, who is still her mooktear, together with the fact of the apparent purchase by a servant of her's, and her having fraudulently attempted to alienate other property to avoid paying her debts, I am satisfied that the purchase was a benamee one by respondent No. 1, and that she is justly liable for the rent, the decision of the principal sudder ameen is therefore amended and sum claimed decreed, with interest to the date of payment against both respondents. Costs to be paid by respondents.

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## ZILLAH NUDDEA.

PRESENT : J. C. BROWN, ESQ., JUDGE.

THE 8TH APRIL 1851.

Case No. 58 of 1851.

*Regular Appeal from a decision passed by Baboo Gourhurry Bose,  
Moonsiff stationed at Bagdaha, on the 26th February 1851.*

Sonai Shah, (Defendant,) Appellant,

*versus*

Nowabdee Mundul, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff to recover a bond debt from the defendant.

The defendant did not at first appear, in consequence of which the moonsiff was proceeding *ex parte*, when the defendant put in his protest against the claim, and pleaded an *alibi*, on the date on which the plaintiff's bond was purported to have been written.

The moonsiff took the depositions of two of the men, whose names were written at the foot of the bond as attesting witnesses, who were both illiterate and unable to swear to the bond. The person who was said to have engrossed the bond was dead.

The moonsiff having admitted the protest of the defendant, summoned the plaintiff's witnesses a second time, and also two persons whom the defendant named as his evidence, that he was at a place 15 or 16 miles distant from where the bond is stated to have been executed. The plaintiff's witnesses, who have in their evidence admitted that they are in debt to him, were not on their second attendance asked to identify the defendant, nor were they cross-examined by him.

The moonsiff, without assigning any reason for giving credence to the witnesses for the prosecution, in preference to the evidence in support of the defence, has decreed the plaintiff's suit in his favor.

I am of opinion that the fact of the plaintiff's witnesses being indebted to him, and the plaintiff being unable or unwilling to produce his account books, also the inability of the witnesses to swear to the document upon which the suit has been preferred, are all facts, which are inimical to a decision in the plaintiff's favor, but it is impossible for an appellate court to decide upon a decree

passed by one subordinate to it, unless the grounds for admission or rejection of evidence are fully detailed. It is not sufficient for a judge (बिचार कर्ता) to state that "the plaintiff or defendant have cited witnesses to prove certain points, but they are not worthy of credit;" but he must state *why*, in his opinion, they are not.

The moonsiff has acted in a very irregular manner, in having added a postscript to his decree. Any thing of the nature of that postscript ought to have been taken into consideration, and embodied in his decision before the final order was passed.

With reference to the above observations, it is ordered, that this suit be remanded to the place it formerly held on the moonsiff's file, and he is to decide it *de novo*, recording the reasons he may have for admitting or rejecting the evidence produced by either party.

The value of the stamp for preferring the appeal is to be refunded to the appellant in the usual way, and any costs he may have incurred will be adjudged when the case is finally disposed of.

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THE 23RD APRIL 1851.

Case No. 37 of 1851

*Regular Appeal from a decision passed by Baboo Kassissur Mittre, Moonsiff of the Sudder Station, Zillah Nuddea, on the 28th December 1850.*

Meah Jan Nickaree, (Defendant,) Appellant,

*versus*

Prankishen Pal Chowdhry, (Plaintiff,) Respondent.

THE plaintiff, who is putneedar of the talook, of which the defendant is a ryot, sued him at an enhanced rate for arrears of rent, on 7 beegahs and 8½ cottahs of land. He has enumerated 7 different sorts of land in his plaint, which he states the defendant has in occupancy, which he has assessed at different rates, the whole amounting to rupees 5, 14 as., 2 gds., 3 cowries per annum.

He has further stated that he has ascertained the quantity of land by actual measurement, that the rent he demands is according to the pergunnah rates, and that he had a notice served on the defendant as provided for in Sections 9 and 10, Regulation V. of 1812.

The defendant denies that the plaintiff has any right to raise the rent on him, he being a *khodkasht* and *kuddemee* ryot; that his father obtained a pottah from the late Maharajah Greesh Chunder Rai Buhadoor in 1218 B. A., for 9 beegahs and 2 cottahs of land of all sorts, and the rent demandable from him is only *Sicca* rupees, 4-14-8; that it is false that the plaintiff ever measured the land he rents, or served him with a notice,

and that the persons the plaintiff has produced are his servants or adherents; that they live at Hurreespore and Seemultullea (which villages the plaintiff has in putnee) and know nothing about Bhadjungla.

On the 10th of July 1849, Syud Sukhawut Hossein, who was then moonsiff of Kishnagur, held a proceeding in which he recorded, that the service of the notice under Regulation V. of 1812 on the defendant, was not satisfactorily proved. He therefore called on the plaintiff for further proof, and also directed him to prove the jumma-wasil-bakee, which he filed as having received from the zemindars, also to prove the jurrub chittas he had filed, and that his demand of rent was according to the pergunnah rates.

This the plaintiff failed to do and accordingly was liable to have his suit struck off the file at the end of six weeks.

The present moonsiff, it appears, deputed first one ameen, and then another, to measure the lands, and ascertain the pergunnah rates, &c.

The reports made by those men with reference to the quantity of land differed not only from the quantity and quality stated in the plaint but with each other, and the boundaries were not the same. In the plaint no boundaries were stated, for which omission the plaintiff ought to have been nonsuited. The moonsiff's personal local enquiries elicited nothing satisfactory either as to quantity, quality, value or identity of the land, which is the subject of this action. A copy of a jummaundee filed by the plaintiff, and which bears the signature of the collector, and has his official seal attached to it, is in its present form inadmissible in support of the plaintiff's claim. Three left hand numbers 184 are plain enough, but it is impossible to decipher what the figure in the place of the unit number is intended for. This does not appear to have attracted the notice of the moonsiff, who has attested several copies of the same document, and filed them in other cases of a similar nature, and instituted by the same plaintiff, without making any remark on this great defect.

Notwithstanding the deficiency of satisfactory proof in favor of the plaintiff, and the discrepancies and incongruities observable in the whole case, the moonsiff has passed an anomalous decree in favor of the plaintiff for rent for 6 beegahs and 5 cottahs of land, the sum of rupees 4, 7 as., 19 gds., 2 cowries per annum, without reference to any defined portion or parcel of land or the rate per beegah.

This is, in fact, no decree, as it cannot be acted on.

If it is true that the defendant is a khoodkasht and kuddeemee ryot, it is not clear to me that the plaintiff, who is only the auction purchaser's putneedar has any right either to interfere with the land he has in occupancy, or to demand a higher rate than the village jummaundee may show he has hitherto paid. Under the

provisions of Section 26, Act I. of 1846, a ryot unless the exceptions therein declared are *proved*, cannot be deprived of the lands held by him, nor can a demand for a higher rate of rent made on him by a purchaser of an estate, much less by a putneedar, but the moonsiff has not taken this subject into consideration.

With reference to the foregoing remarks, I am of opinion that the moonsiff's decree has been passed without due investigation or satisfactory proof, and is in itself, (on account of no boundaries being defined, or the rates of the pergunnah with reference to the land decreed for assessment, being declared) irregular and illegal, and the case must under the provisions of Clause 2, Section 2, Regulation IX. of 1831, be remanded for re-investigation.

It is therefore ordered, that the moonsiff's decree is reversed, and he is directed to re-instate it in its original place on his file, and, having thoroughly re-investigated it, he is to decide it on its merits. The usual order regarding the refund to the appellant of the value of the stamp for preferring the appeal, and the eventual payment of any costs incurred by him is to apply to this case.

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THE 23RD APRIL 1851.

Case No. 39 of 1851.

*Regular Appeal from a decision passed by Baboo Kassissur Mittre, Moonsiff at the Sudder Station, Zillah Nuddea, on the 28th December 1850.*

Goluck Mundul Nickaree, (Defendant,) Appellant,

*versus*

Prankishen Pal Chowdhry, (Plaintiff,) Respondent.

THE decree, from which this appeal has been preferred, was passed on the same unsatisfactory grounds as case No. 37 disposed of by me this day. The nature of plaintiff's claim is the same, and a similar defence set up, and the case is altogether similar with the exception of the amount of the claim and the award. There is great error observable in this case as well as in Nos. 40 and 42, which have been perused, which the moonsiff has most unaccountably fallen into, and that is awarding the plaintiff more land for assessment than he claimed. In the plaint Prankishen Pal Chowdhry claimed 39 beegahs, 11½ cottahs, but the moonsiff has decreed to him 40 beegahs and ½ cottah, and in the same manner as in No. 37 he has fixed a certain rent upon that quantity of land without defining the land or valuing it according to the pergunnah rates in which all descriptions of land are not of the same value.

Under the above circumstances the same observations that I have recorded in case No. 37, will apply to this case.

It is ordered, that the moonsiff's order is reversed, and the original record of the proceeding be remanded to the moonsiff's file for re-investigation, and that a legal order may be passed upon its merits. The usual order regarding the refund of the stamp for the appeal and the costs to apply to this case.

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THE 23RD APRIL 1851.

Case No. 40 of 1851.

*Regular Appeal from a decision passed by Baboo Kassissur Mittre, Moonsiff at the Sudder Station, Zillah Nuddea, on the 28th December 1850.*

Nubbaie Nickaree, (Defendant,) Appellant,

*versus*

Prankishen Pal Chowdhry, (Plaintiff,) Respondent.

THIS case like the preceding Nos. 37 and 39, must for the same reasons be remanded for trial on its merits, to the file of the moonsiff. In this case the decree is for the rent of 8 cottahs of land more than the plaintiff sued for, he having only asked for rent on 19 beegahs,  $6\frac{1}{2}$  cottahs, but the moonsiff has decreed 19 beegahs,  $14\frac{1}{2}$  cottahs.

It would be waste of time to go further into the details of this case, for the decision is as faulty as the two that have preceded it.

It is accordingly ordered, that this suit be remanded to its former place on the moonsiff's file for re-investigation with reference to the remarks made in Nos. 37 and 39, and for a legal order to be passed on its merits. The value of the stamp for preferring the appeal will be refunded to the plaintiff, and any costs he may have incurred are to be awarded as may appear just when the case is decided.

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THE 23RD APRIL 1851.

Case No. 41 of 1851.

*Regular Appeal from a decision passed by Baboo Kassissur Mittre, Moonsiff of the Sudder Station, Zillah Nuddea, on the 28th December 1850.*

Chunder Nickaree, (Defendant,) Appellant,

*versus*

Prankishen Pal Chowdhry, (Plaintiff,) Respondent.

THIS suit being similar in every way to No. 37, decided this day, it must also for the reasons there given be remanded to the moonsiff for re-investigation.

The decree passed by him is accordingly reversed. He is directed to replace the case in its former place on his file, and, having re-investigated it, he will dispose of it on its merits. The usual orders regarding the refund of the value of the stamp for preferring this appeal, and the eventual payment of the costs incurred by the appellant to apply to this case.

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THE 23RD APRIL 1851.

No. 42 OF 1851

*Regular Appeal from a decision passed by Baboo Kassissur Mittre, Moonsiff of the Sudder Station, Zillah Nuddea, on the 28th December 1851.*

Roopchand Nickaree, (Defendant,) Appellant,

*versus*

Prankissen Pal Chowdhry, (Plaintiff,) Respondent.

THIS case is similar to Nos. 39 and 40, decided this day, with this exception that the suit was for the assessment on and rent of 8 beegahs, 16½ cottahs, at rupees 7, 14 as., 8 gds. per annum, and the moonsiff has decreed it for 14 beegahs, 13½ cottahs, at an annual jumma of rupees 11, 13 as., 16 gds. I am at a loss to discover under what law so extraordinary a decree has been passed by an officer, who has been employed in the judicial line for a long series of years. Some great mistake has evidently been made, to rectify which, and with reference to the remarks made in No. 37, which equally apply to this case, it must be remanded for re-investigation and decision *de novo*.

Ordered, that the decree passed by the moonsiff be reversed, and he is directed to replace the suit in its original place on his file, and, having thoroughly re-investigated it, that he is to decide it legally on its merits. The usual order for the refund to the appellant of the value of the stamp for preferring this appeal, and the eventual payment of any costs incurred by him to apply to this case.

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THE 25TH APRIL 1851.

No. 23 of 1848.

*Regular Appeal from a decision passed by Baboo Ramluckhun Ghose Rai Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the 31st January 1848.*

Bamundass and others, (Defendants,) Appellants,

*versus*

Mr. P. Rayson, (Plaintiff,) Respondent.

THE plaintiff sued to obtain possession of 127 beegahs, 6 biswas of chur land, attached to 12 annas of kismut Bhoobun Battee *allas* Akundanga, in pergunnah Muhommud Ameenpore, purchased by him under 2 kuballas from Gourreepershad Chukerbuttee, which the collector had settled with Bamundass Mookerjea and others, proprietors of mouza Pullea.

The suit has been laid at rupees 741, 13 as., 2 gds., including mesne profits.

The plaintiff had included the collector in the parties he sued, but afterwards petitioned for his being excluded.

The defendants, who are now the appellants, found their claim to the lands in dispute, on three points; 1st, that, in the collector's *serishta* they were entered as proprietors of Pullea; 2ndly, that it was proved by the local investigations made by Frankishen Ghose, an ameen deputed by the collector; that there were  $2\frac{1}{4}$  beegahs close to a peepul tree, belonging originally to mouza Pullea, and that they as proprietors of Pullea have a right to all alluvial land, which is opposite and attached to those  $2\frac{1}{4}$  beegahs. 3rdly, that when the land was resumed prior to being brought under settlement by the revenue authorities, Gourreepershad claimed this land; but his claim was rejected, because the collector was satisfied that  $2\frac{1}{4}$  beegahs of the original land belonging to Pullea was in existence, and made the settlement with them as proprietors.

The plaintiff, in reply, pleaded that prior to Frankishen Ghose being deputed by the collector to measure the lands, another ameen had gone for that purpose and had measured them wrong, upon which Gourreepershad, the former proprietor of the plaintiff's talook, petitioned the collector, complaining of the ameen's conduct, upon which Mr. Loch, the collector's assistant, went to the spot, and finding the measurement and report of the ameen incorrect set it aside and appointed Frankishen Ghose to re-measure and report upon the lands; and Mr. Loch went himself to the spot, and after full investigation regarding what actually belonged to Bhoobun Battee, and what to Pullea, defined the boundary according to which Frankishen Ghose measured and reported on the land, when the collector,



(Mr. A. Ogilvie,) made the settlement, it was "contrary to the ameen's report, and Mr. Loch's investigation.

This suit was originally decided by Syud Ahmud Buksh as sudder ameen, and he, on the 15th of August 1843, dismissed the plaintiff's claim, because the former proprietor did not make any objection when the collector was making the settlement.

An appeal was instituted from that dismissal, which was disposed of by the principal sudder ameen, who confirmed the decision on the 7th of April 1845. The plaintiff instituted a special appeal in the Court of Sudder Dewanny Adawlut on the 3rd of July 1845, which was disposed of by that Court on the 12th of December 1846, and remanded for re-investigation with the following remarks: "The collector's settlement roobukaree of 17th August 1839, called for by the Court indicates that Gourreepershad, the former proprietor, did claim the chur land, and that the collector rejected his claim, a fact acknowledged by the defendant in his answer, even had not Gourreepersaud, the former proprietor, urged the claim, it seems hard, that if the land was *bond-fide* included in the plaintiff's purchase, he should be debarred from claiming, on discovering the error of the late proprietor, his vendor."

The principal sudder ameen on receiving the suit back for further investigation proceeded to the spot, and personally inspected the land and drew a sketch of it, which has been countersigned by the vakeels or representatives of the parties, and having taken further evidence he proceeded to decide whether the settlement made by the collector on the 17th of August 1839, notwithstanding the claim to proprietary right set up by the owner of the talook of Bhoobun Battee was just or not, and he considered the plaintiff had made out his case for the following reasons:

*First.*—It is clear from the local investigations made by Prankishen Ghose, the ameen deputed by the collector, and whose report is referred to in the collector's roobukaree of the 17th of August 1839, that the original lands situated to the north of, and joining the alluvial land now in dispute, belong to Akundanga, kismut Bhoobun Battee.

*Secondly.*—On personal inspection of the disputed land, it was seen that on the eastern boundary of the chur lands belonging to Bhoobun Battee, there was a very large embankment, (or bund) on the eastern side of which were chur lands belonging to mouza Muddun Dangah, and on the west the lands claimed by the plaintiff as belonging to Bhoobun Battee and in dispute, and this bund the plaintiff states is the division between the two estates, several witnesses cited by the defendants stated that the bund was thrown up for the purpose of keeping out the river and saving the indigo crops.

This though the principal sudder ameen considered as ridiculous, because the river runs at right angles with the southern extremity

of the bund, and\* beyond the chur land, and it is clear that if the bund had originally been intended to prevent the river overflowing the indigo on the chur lands, it would have been thrown up to the southward parallel with the river, and running east and west instead of being as it is at a right angle and running north and south. As it is, it stretches right across the chur lands, and cannot obstruct the overflowing of the river at all. The witnesses cited by the plaintiff have proved that at a former period, the owners of the two talooks, (Bhoobun Battee and Mudun Dangah), disputed about their rights, which having settled, the bund was thrown up to prevent any further disputes. This the principal sudder ameen believes to be the truth, because he observes that the road, which runs east and west at the northern extremity of the bund, is on the original land, which belongs to Akundanga, kismut Bhoobun Battee, and in the possession of the proprietor of that estate.

*Thirdly.*—The defendants, now appellants, have stated and cited witnesses to say, that on account of there being  $2\frac{1}{4}$  beegahs of land in existence of their mouza Pullea, (the rest having been carried away by the encroachment of the river) they are entitled to the land which has re-formed contiguous to it, down to the water's edge. One of their witnesses, however, deposed on oath to the ameen deputed by the court that the bund was the boundary between Bhoobun Battee and Mudun Dangah, the former lying to the westward, and the latter to the eastward of the bund. Although on the witness saying this, the defendants said they rejected his evidence, and would not have it taken, they gave no satisfactory reason for rejecting evidence, which was quite to the point at issue.

Besides a party having cited a witness to give evidence on oath, has no right after he has been sworn and his evidence recorded, to reject it, merely, because it is contrary to his views or wishes. Unless a witness is guilty of perjury his evidence must be believed whether for or against the party who cited him. Another witness of the defendants, named Kosai Sheikh, has in answer to question No. 11, stated that the land to the east of the bund is Mudun Dangah, and that Budduroodeen and Mavizoodeen, who have the  $2\frac{1}{4}$  beegahs, claimed by the defendants as belonging to Pullea, in occupancy pay the rent to the gomashta of Akudangah.

This man, however, on being further examined the following morning, gave contrary evidence to what he had said the day before, which clearly shows he had been tampered with or tutored. It is not, however, on record that this witness was on his oath on the second day, or he would be liable to the penalties for perjury. On the whole the evidence for the defence is most unsatisfactory, and the plaintiff's prior claim to have the settlement concluded with him is clearly established. The investigation and report made by Mahomed Wallee, ameen of Paneeghatta, who was deputed by this court

for the purpose of making local enquiries, are, for the reasons stated, contrary to my opinion and inadmissible.

After recording the above reasons the principal sudder ameen decreed the plaintiff's suit in his favor, reversing the collector's admission of the defendants as proprietors of the land in dispute.

The appellants have in a very lengthy petition stated their objections to the decree passed by the principal sudder ameen, but have not, in my opinion, urged a single point which weakens it at all. They have, of course, objected to the view he has taken of the case, and their evidence, but not only that, but they have introduced fresh objections to the plaintiff's suit, which are, of course, inadmissible in appeal. They should, while the case was pending in the court of primary jurisdiction, have brought forward every objection they had to make, instead of trusting, as they now pretend, on the defence the collector gave in. If the collector defended the case it would be as collector, but they, as they styled themselves the proprietors, ought to have made their defence quite independent of his.

After having gone through the case very attentively, and given all the objections advanced due consideration, I am of opinion that they are no grounds for reversing the principal sudder ameen's decree.

The only thing the appellants ground their claim upon is a bit of ground measuring  $2\frac{1}{4}$  beegahs, which they say belonged to a village of theirs named Pullea, but this has not been proved, and even if it had, it is well known that the boundaries of villages are not straight or in any particular shape. A corner of their former village may have been situated where they point out, and there may have been a peepul tree standing on it, but that does prove their right to alluvial land opposite to the tree when land belonging to another estate intervenes. The principal sudder ameen has recorded after personal inspection and investigation, that between the tree and the land in dispute, is original soil belonging to Akundangah, which crosses the northern extremity of the bund, so that the land in dispute cannot be said to be contiguous to the  $2\frac{1}{4}$  beegahs on which the peepul tree is. The appellants' story about the bund is that it was thrown up to keep out the water from the river. The very construction of it shows how ridiculous such an assertion is, because it is at right angles with the river; the plaintiff's account of the bund is much more probable, that it was thrown up as a boundary between the cultivation of two indigo concerns. These being situated in separate talooks and belonging to separate proprietors, it is not to be supposed that they would have allowed the bund to be put anywhere, but on the boundary line, between their respective estates, and thus even if there was no other proof of the bund being the boundary, the very fact of

the zemindars allowing it to be put where it is would be sufficient. The plaintiff has named the parties who threw up the bund, viz., two indigo planters to settle the boundary. The defendants (appellants,) on the contrary, though they say the bund was placed there to prevent the overflowing of the river, cannot say who threw it up. There is no proof that there are  $2\frac{1}{4}$  beegahs of the original lands of mouza Pullea in existence. The proofs alluded to by the defendants (appellants) are not worth any thing, being unauthenticated reports, or measurement papers, furnished by native agents who for a small douceur would certify any thing.

Being of opinion that the decision of the principal sudder ameen is perfectly just and legal, and nothing advanced by the appellants having shaken it in any way, I dismiss the appeal, with costs, and direct that notice be given to the principal sudder ameen of the confirmation of his decree as enacted in Clause 3, Section 16, Regulation V. of 1831.

The respondent having appeared by vakeel without being summoned, must pay any costs he may have incurred himself.

THE 25TH APRIL 1851.

Case No. 35 of 1848.

*Regular Appeal from a decision passed by Daboo Ramlochan Ghose Rai Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the 29th February 1848.*

Doorgachurn Biswas, (Plaintiff,) Appellant,

*versus*

Muheshchunder Bonnerjea and others, (Defendants,) Respondents.

THIS is a very intricate case inasmuch as both parties have deeds conveying the property to them separately, and the original proprietor of it is dead.

The plaintiff states that he first took the mouza Chumpatullah, which Koonje Kishore Mookerjea had a gantee jumma, or perpetual lease of from him in pledge for two years, having advanced 500 rupees on it, and Koonje Kishore executed a kutkuballa that if the principal and interest were not paid up by the 30th of Kartick 1251 B.  $\text{\AA}$ ., he would forfeit the property, which was to become that of the plaintiff. Koonje Kishore died before the money was repaid on the 20th of May 1844, corresponding with the 8th of Jyete 1251 B.  $\text{\AA}$ ., the plaintiff presented a petition in the civil court to foreclose the mortgage under the provisions of Regulation XVII. of 1806.

On the 19th of May following Muheshchunder Bonnerjea presented a petition, saying Koonje Kishore had disposed of the property to him, and that he was in possession.

The plaintiff instituted his suit in April 1846, and the principal sudder ameen has dismissed his suit, first, because his bond is not registered; secondly, because he thinks the witnesses from their recollecting every thing that occurred six or seven years before are not worthy of credit.

Although he has recorded his opinion that the deeds under which the defendant Muheshchunder has possession are very suspicious, and he considers that both the parties having found the heirs of the deceased Koonje Kishore without a protector, have each tried to deprive them of their paternal estate, yet finding Muheshchunder in possession, he considered there was no occasion to enter into his proofs and dismissed the plaintiff's suit.

I do not agree with the principal sudder ameen in the view he has taken of the plaintiff's case. Five witnesses whose names are on the deeds have sworn to the transaction and two of them to the bond; as to when or where the stamp paper was purchased or who gave it, it matters little, and the Regulations of Government do not declare that because a deed is not registered it must needs be suspected and rejected.

With regard to the witnesses' depositions, it would appear that where they agreed in what they said, he gave that as a reason for discrediting them, and where they have not agreed exactly, he has rejected their evidence as inadmissible.

His reasoning in this case is not good. It is to be taken into consideration that between the 20th of May 1844, when the plaintiff presented his petition for foreclosing the mortgage, and the 19th of May 1845, when Muheshchunder presented his objections, the latter had had abundance of time to make up all the deeds he has alluded to in his answer to the plaint, and to tutor his witnesses to prove them. If Muheshchunder's claim was *bond fide* good, fair and just he ought to have appeared at once to oppose the plaintiff's claim, instead of which he was 364 days thinking about it.

This circumstance, I think, is greatly against his claim, but the principal sudder ameen having omitted to take evidence in support of his claim, it is impossible to pass judgment on it. It would appear from the nuthee that all the defendants were not in attendance when the case was pending before the principal sudder ameen, and Doorgapershad Chatterjea, the vakeel of Bamasoodree, states that his client resides in another zillah, and was quite ignorant of the suit having been instituted.

This may be true or false, at all events the investigation of the original suit was not searching enough to be convincing, and I am of opinion that local investigation will do more to lay open the truth of the case, than all the witnesses or deeds the parties can bring, as such matters as the mortgage of land or disposing of it in any way is sure to be known by the inhabitants.

Being of opinion that the investigation has not been sufficient, it is necessary to return the case to the principal sudder ameen for re-trial, after issuing notices to all the parties concerned and taking any further proof from either or both parties that they may have to submit.

Ordered, that the original suit be remanded to the principal sudder ameen's file to re-investigate, with reference to the above remarks and dispose of it on its merits. The usual order regarding the stamp and costs to apply.

THE 28TH APRIL 1851.

Case No. 31 of 1849.

*Regular Appeal from a decision passed by Baboo Ram Lochun Ghose Rai Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the 27th February 1849.*

Tarruckchunder Rai, (Defendant,) Appellant,

*versus*,

Goloke Hurree Bukshee, (Plaintiff.) Respondent.

THE plaintiff sued to obtain possession of four villages, situated in turruf Muhutpoor, which the defendant, who was durputneedar of them, sold to him under a deed of sale, dated the 12th of Poos 1251, for the sum of Company's rupees 1681, which deed of sale was duly registered on the 26th of December 1844, the plaintiff having given the defendant a written agreement, that if he redeemed the property by the re-payment of the principal and interest on or before the 15th of Poos 1252, he (the plaintiff) would relinquish all right and title to the property, otherwise the sale was to stand good, and the defendant would forfeit all claim to it. The defendant did not redeem the estate, and the plaintiff accordingly on the 5th of Jyte 1253, presented a petition to the civil court under the provisions of Regulation XVII. of 1806, and a notice was served on the defendant. The defendant did not pay the money within the prescribed time, but within the year allowed him, presented a petition containing excuses, which were not admitted according to law, and when the time was up the sale became absolute. The property having been all along in the possession of the defendant who would not relinquish it, the plaintiff has brought his suit to obtain possession and mesne profits from the date of institution of the suit.

The defendant has admitted the whole of the plaintiff's statement with the exception of the re-payment of the purchase money, and further urges that the plaintiff gave him Company's rupees 181, less than is stated in the deed of sale, which he was obliged to submit to, being a needy man and in great want of the money to

save the property from sale for arrears of revenue; that he had at different times re-paid to the plaintiff various sums, amounting to Company's rupees 1150, for which the plaintiff gave him receipts as money in deposit, which were all worded that the money was paid on account, and when the whole debt was paid, there would be a settlement and the deed of sale would be returned; that on the 1st of Jyte 1253, he took rupees 508-12, which remained to the plaintiff, who would not receive it, because he wanted to charge interest at the rate of 2 rupees per cent. per mensem, which the defendant having refused to pay, the plaintiff gave in the petition for confirming the sale and making it absolute. He further states that the putneedar and plaintiff combined and had the property sold for balance of revenue, which the plaintiff purchased in his brother (Tarun Hurree Bukshee's) name, which sale he (the defendant) instituted a civil suit to reverse, and it was decreed in his favor.

The plaintiff, in his rejoinder, repudiates the whole of the defendant's answer, but admits that his brother did purchase the defendant's right and title in the property, when it was sold for balance of revenue, and that the defendant recovered it, but that decision has been appealed.

Tirlochun Rai and others have appeared as a third party, claiming co-parcenary.

The principal sudder ameen has decreed this case against the defendant (appellant,) on the grounds of his own admissions.

He has acknowledged having pledged his durputnee tenure, and not having redeemed it within the time allowed him by law. The excuses he now makes of not having received the whole of the purchase money, not having been made at the proper time is now inadmissible. The three witnesses brought forward by the defendant to prove that the plaintiff wanted him to pay illegal interest, being servants of the defendant, and under his control, the principal sudder ameen rejected their evidence.

The appellant has, in his appeal, made all the objections that he did in the regular suit, but at greater length introducing objections and naming proofs, all of which, if he had them, should have been brought forward before. I see no reason to interfere with the principal sudder ameen's decree, the appellant has corroborated the plaintiff's statement of his case, he has acknowledged the conditional sale, and admitted having allowed the time granted him by law to pass over without redeeming his property, and this being the case, he has forfeited his land and under the provisions of Regulation XVII. of 1806, and the Circular Order of the Court of Sudder Dewanny Adawlut, No. 37, dated 22nd of July 1813, the sale has become absolute, and he must lose his lands.

Under the above circumstances there is no occasion to summon the respondent, but under Clause 3, Section 16, Regulation V. of

1831, it is ordered, that the appeal is dismissed, and the decree of the principal sudder ameen is confirmed, notice of which is to be communicated to him as provided for in the above mentioned enactment.

THE 29TH APRIL 1851.

Case No. 48 of 1849.

*Regular Appeal from a decision passed by Baboo Ramlochan Ghose Rai Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the 25th April 1849.*

Unnodah Purshad Sandial, (Defendant,) Appellant,

*versus*

Chand Moollah, (Plaintiff,) Respondent.

THE appellant, when he was a moonsiff in this district, and was stationed at Hansekallee, borrowed money of several persons, and amongst others from the respondent.

He has admitted that he borrowed the 200 rupees, which is the subject of this suit, and the only point he disputes, and for which he has brought this appeal, is that when his creditors became clamorous, by way of keeping the respondent quiet, he sent him two double barrelled guns, which he valued at 250 rupees, 30 rupees in cash, and a draft on a man named Gorachand Sheikh for 3 rupees due for rent, in proof of which he has filed a note, dated 22nd of Assar 1253, which he states he received from the respondent in which he acknowledges the receipt of the guns, which he does not consider worth 250 rupees, the 30 rupees in cash, and the order for 3 rupees, and goes on to say that, when they meet, they will settle at what amount the guns are to be credited, when that sum, the 30 rupees in cash, and the 3 rupees from Gorachand Sheikh, shall all be written on the back of the bond as having been received in part payment; that the interest account should be then made out, and whatever might be due the appellant should pay in cash, and after this the respondent remained quite quiet; that on the 12th of Assar 1255 the plaintiff's son, under the plea of a loan, borrowed two shameeanahs from the defendant, and then wished to take them at a valuation in part of the claim his father had.

This the defendant says he refused, upon which the plaintiff's son induced his father to conceal what he had received in payment, and to institute this suit. Since it was instituted one of the shameeanahs has been returned, but the other, the value of which was 125 rupees, has not been restored.

The principal sudder ameen has, in his decision of this case, remarked that, as the defendant (now appellant) has acknowledged



the debt and admitted the execution of the bond, it is only necessary to investigate his pleas of having, by the payment of cash and delivery of certain guns, liquidated a part, if not the whole, of the plaintiff's demand. He observes in the first place that the evidence of Moulvee Gholam Russool, a vakeel of his court, and Azum Moollah the plaintiff's son, do not prove that the defendant made any payment, or gave any thing in liquidation of his debt; secondly, that the note, which the defendant alleges the plaintiff wrote to him, acknowledging the receipt of the guns and cash, not being witnessed, is not susceptible of proof; thirdly, that as it is incredible that the defendant who had been a moonsiff for many years, should, when he had borrowed the money in so irregular a manner, have allowed the plaintiff to have imposed upon him as much as he states, and not have obtained a legal receipt. The note he has filed, and the witnesses he has cited (not being respectable persons) are not worthy of credit. He therefore, on the admission of the original debt by the plaintiff, and on the evidence of the witnesses in support of the plaintiff's claim, decreed the case in favor of the plaintiff.

The grounds the appellant has given for appealing are that he did not name Moulvee Gholam Russool and the plaintiff's son as witnesses; that he had paid any thing in liquidation only; that the latter had borrowed two shameeanahs, one of which only was returned. Next that having according to law had the plaintiff's note stampd, it could not be looked upon as a document written on plain paper, but be received as if it had been originally written on a stamp paper.

After due consideration of the whole case, the principal sudder ameen's grounds for decreeing the plaintiff's suit in full in his favor, and the reasons given by the respondent for being dissatisfied with the decision, I do not consider that the appellant has shown good and sufficient cause for altering the decree.

The defendant (now appellant) having disavowed that he gave the two shameeanahs in part liquidation of his debt, it was superfluous making any investigation on that subject. While on this part of the case, I must remark that it was highly improper in the principal sudder ameen to allow the defendant to examine the plaintiff's vakeel on any point connected with his client's case. It is at variance with the spirit of Section 22, Regulation XXVII. of 1814, although the wording may be taken as merely prohibiting a vakeel being entertained to conduct the cause of one party after he had accepted the vakalutnamah of the opposite side.

The affixing of the stamp to the plain paper, which the appellant alleges to be a receipt for two guns and some cash, only rendered it receivable in court, but it did not in any way strengthen the appellant's case. To prove that the receipt was really given, the evidence of two credible subscribing witnesses at least are requisite,

those whom the appellant brought forward *were not of that respectability* as to warrant their being credible, one of them being a Rajbungsee. Even admitting the note to be genuine it is inexplicable how the appellant allowed so long a time as from the 5th of July 1846, corresponding with 22nd Assar 1253 to 10th August 1848, corresponding with 27th Sawun 1255 to elapse without coming to some settlement, as from the note, which the appellant lays so much stress upon, it would appear that the plaintiff declined taking the guns at the valuation the appellant put on them, and reserved carrying their value or the cash to the appellant's credit until they met and settled the matter.

If the plaintiff was a dishonest man he could easily have denied having received the 102 rupees, 8 annas, which he has given credit for, and I think there is reason in supposing that during the space of two years the defendant must have had an opportunity of meeting the plaintiff and settling with him the value at which the guns would be credited in account, if the communication put in as proof, by the defendant, is genuine.

Viewing the case in all its bearings, I cannot see any good or sufficient reason for altering or reversing the decree.

With regard to the petition of appeal, I must observe it is worded in a highly disrespectful and objectionable manner, as regards the investigation made by the principal sudder ameen. The only answer the vakeels have to give is that the appellant presented it in person, and they were subsequently engaged. The excuse is a very poor one, because it generally happens that when any thing offensive is inserted in any pleading, that the vakeel says he did not file it, but his client did in person, although he may have drawn up the paper himself. It was the vakeel's duty, as enacted in Regulation XXVII. of 1814, to have looked over the petition of appeal before they accepted the vakalutnamah. Should such an instance occur again in any case in which the vakeels, who have appeared for the appellant in this case, are engaged, serious notice will be taken of their conduct after this warning.

With reference to the foregoing remarks it is ordered, that the appeal is dismissed, and notice of this decision is to be given to the principal sudder ameen as provided for in Clause 3, Section 16, Regulation V. of 1831.

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THE 29TH APRIL 1851.

Case No. 122 of 1850.

*Regular Appeal from a decision passed by Baboo Ramlochan Ghose Rai Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the 21st July 1850.*

Bijai Chunder Rai and Sandha Dibbea, (Defendants,) Appellants,

*versus*

Omeschunder Rai, (Plaintiff,) Respondent.

THE plaintiff sues to recover Company's rupees 500, principal, and Company's rupees 87-8 interest thereon, on a bond dated 18th Poos 1254, from the appellants, and Neelcaunt Rai, Dwarkanath Rai and Greeshchunder Rai, which bond he has filed and proved by the evidence of three credible witnesses who signed their names with their own hands.

The defendants, as is generally the case in suits of this nature, deny the transaction, but have neither given any good and sufficient reason for so doing, nor have they offered any proof of the falseness of the claim, nor in their cross-examination of the plaintiff's witnesses, have they been able to shake their testimony.

Their appeal is so bad and unfounded, that it has been preferred by the only vakēl in this court who will only act in such cases. The appellants are without a shadow of proof in their favor, whereas on the contrary the plaintiff's claim is clearly proved by three credible witnesses.

The principal sudder ameen has most justly decided in the plaintiff's favor, and the appellants, who are only two of the five defendants, have advanced nothing that is worthy of notice to invalidate it. Under the provisions of Clause 3, Section 16, Regulation V. of 1831, there is no occasion to summon the respondent; but as I consider the decree legal and just, it only remains to confirm it. I accordingly dismiss the appeal, and confirm the principal sudder ameen's decree, which is to be notified to him as directed in the law quoted above.

THE 30TH APRIL 1851.

Case No. 64 of 1851.

*Regular Appeal from a decision passed by Baboo Ramcomul Rai Chowdhry, Moonsiff, stationed at Meherpore, on the 31st March 1851.*

Punchanun Chowdhry, (Plaintiff,) Appellant,

*versus*

Ramchunder Ghose, (Defendant,) Respondent.

THE plaintiff has sued to recover, on a bond, rupees 61-2.

The defendant repudiated the claim, declared he knew neither the plaintiff nor his witnesses, and that the suit is a false one, instituted through enmity existing between the plaintiff and defendant's nephew.

The moonsiff has dismissed the suit, not considering the testimony of the plaintiff's witnesses worthy of credit, also on account of the most glaring discrepancies, and two out of three of their not recognising the defendant, whom they said they had seen borrow the money, though he was sitting close to them.

The appellant has had no grounds for his appeal, and merely urges that the incongruities noted by the moonsiff are in fact nothing.

It would be impossible to decree the plaintiff's case in his favor on the evidence he has produced.

The defendant lives at a distance of 12 miles (6 coss) from the plaintiff, and is in no way connected with him, so that it is very improbable that the plaintiff should have advanced him rupees 45, merely because he asked for it. None of the subscribing witnesses can read or write, so they are unable to identify the bond. None of the subscribing witnesses had any acquaintances with the defendant prior to the day on which they say he borrowed the money. It is usual for the borrower of money to furnish the stamped paper, in *this* case, the lender is said to have done so. Some of the witnesses say the money was in a box, which was placed near the plaintiff, others say he fetched it tied up in one of the corners of his dress. Regarding the place where the alleged bond was written the witnesses to it disagree, and lastly, when their depositions were being taken, and the defendant was sitting close to them, two of them on being asked if he was present, said "no," and one after much delay and hesitation pointed him out.

It is impossible to conceive from what motives the plaintiff ever brought forward a claim, the proof of which is so very faulty, the discrepancies are very glaring, and the appeal, in consequence, inadmissible.

It is therefore, under the provisions of Clause 3, Section 16, Regulation V. of 1831, ordered, that the appeal be dismissed, and notice be given to the moonsiff accordingly.

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## ZILLAH PATNA.

PRESENT: R. J. LOUGHNAN, Esq., JUDGE.

THE 2ND APRIL 1851.

No. 10.

*Appeal from a decision passed by Rai Shunker Loll, 2nd Principal Sudder Ameen, on the 31st December 1850.*

Gholam Hossein and Syud Mahomed Ameer, two of the  
Defendants, Appellants,

*versus*

Jowahir Beebee, (Plaintiff,) Respondent.

SUIT to obtain possession of half mouza of Munjhunpoora, with the appropriated proceeds thereof from the year 1245 to the year 1254 F. S., laid at rupees 1468-7-2.

The plaintiff stated that Munjhunpoora was an ancestral estate held in separate half shares by her late husband, Bakee Loll, and his father's brother's son the defendant, Oomrao Singh, till Bakee Loll was dispossessed by Doobree Sahoo, the deceased brother and son of the defendants, Bhyro Sahoo and Moosnoo, at the instigation of the said Oomrao Singh in 1245 F. S. The defendants replied, denying that the ancestral property left by Doolee Ram, the grandfather of Oomrao Singh and Bakee Loll, had ever been partitioned, and contending, therefore, that plaintiff had no right to any thing but maintenance.

In his decision the principal sudder ameen writes that, in his opinion, the evidence adduced by the plaintiff, and even the depositions of the witnesses examined on the side of Oomrao Singh, defendant, establish the fact of that defendant, and Bakee Loll's having been separate in board and habitation in the worship of their divinities and of Kishen Loll's (the son of Bakee Loll) having performed his father's funeral rites; that Oomrao Singh, in his answer, has not denied these facts; that it is proved particularly by the tenor of the petition quoted in the proceeding of substitution of names of proprietors of Munjhunpoora, dated 24th October 1828; that it was then held in possession by Bahadoor Singh and

Girdharee Loll in equal shares, half and half, and by the cancelled lease, dated 30th Bhadoon 1246, the engagement (kubooleut) dated 27th March 1844, the ishtearnama of 5th December 1842, the copy of mooktearnama of Oomrao, defendant, of 29th September 1840, copy of petition of Oomrao Singh and Bakee Loll, were separate in their concerns; and from a decision of the moonsiff of 10th July 1844, and a proceeding of the principal sudder ameen of 6th June 1845, and the evidence of the witnesses that the plaintiff succeeded to the estate of her husband and son. Therefore these things being considered sufficient proof of the division of the estate of the original ancestor of the parties, although no actual allotment (butwarra,) according to Regulation XIX. of 1814 of the lands of Munjhunpoora had taken place, still the partition of the estate of the common ancestor Doolee Ram being established according to the exposition of the shasters made in the bewustas of the pundits. The principal sudder ameen consider the plaintiff's title established and the defendant Oomrao Singh not entitled, according to the decision of the Sudder Dewanny Adawlut of the 27th December 1841, during the lifetime of the plaintiff, to any part of the estate of her late husband and son.

The appellants stating their titles on the disputed half share of Munjhunpoora to have originated that of Syud Mahomed Ameer in a deed of conditional sale, bearing date 6th October 1846, and that of Sheikh Gholam, in a deed of absolute sale, bearing a date subsequent to the institution of the respondent's suit, viz., on the 31st May 1847, both executed by Oomrao Singh defendant, appeal from this decision. Among their reasons are the following: first, the proceeding in respect to the substitution of the names of the present proprietors for that of Doolee Ram can be no proof of the partition of his estate, for plaintiff's plea is that the partition took place after the deaths of his sons, whose names were directed by the said proceeding to be registered; secondly, that the question was improperly put to the law officers, inasmuch as the plaintiff had acknowledged her husband's dispossession in 1245 F. S. How then was her infant son and she herself as written in the questions in possession of their ancestor's estate. These objections appear some to be good and valid, for according to the plaintiff's pleas it must be understood that the property left by Doolee Ram was undivided in the lifetime of Girdharee Loll and Bahadoor Singh, and partition of it was made by the sons of those persons, in fact of the proceeding in question were proof of the partition of the property in litigation, there would have been no need of an exposition of the shaster by the pundits; secondly, on reference to the questions put to the pundits I find that they contain the following statements: "if the grandsons were in possession, half and half of the property left by their grandfather, and if the infant son of one grandson and the other grandson, and after the death of the said infant his mother, the wife of the other

grandson was in possession of the estate of the common ancestor.

If these facts had been proved then again there would have been no necessity for the question to the pundits for the separate possession of shares by the grandsons, the point litigated is here assumed as proved. The decision is therefore founded on improper grounds; the following would have been a more proper question to be put to the pundits in this case. Two brothers lived united, possessing in common their deceased father's property, after their deaths their sons divided the property acquired by the father and uncle. They became separate in food and residence, in concerns and worship of all their divinities. One of the cousins died, leaving a widow and minor son; the minor, being under the guardianship of his mother, performed his father's obsequies and succeeded to his estate. On his death his mother, the wife of his deceased father, succeeded to his estate. Are these circumstances to be considered sufficient proof according to the shaster that the cousins were separated, and divided the whole of the property left by their grandfather, and is the widow the rightful heir to her deceased husband and son's estates, or the cousin of said husband; secondly, without the partition such as is made according to the provisions of Regulation XIX. of 1814, can partitions of land be said according to the shaster to have taken place: for instance if the proceeds of the lands are received according to stated, hares for such a partition (butwarra) of the lands left by the common ancestor be it known did not take place.

The decision of the principal sudder ameen is for the reasons above stated considered imperfect and is reversed. The suit will be remanded for re-hearing and decision, after taking a new bewusta from the pundit from whom it may be deemed proper, according to the question above directed. The value of the stamps used in this appeal will be refunded.

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THE 22ND APRIL 1851.

No. 3.

*Original Suit instituted 10th April 1847.*

Musst. Muddoo, Plaintiff,

*versus*

Doorga Koowur and Chand Koowur, Defendants.

Chadee Loll, Taleour Muhto, Koela Beebee, and Ubdool Alee,  
Objectors.

CLAIM to possession on a 3 anna share of lot talooka Muhur-rumpoor, Mooradpoor, Durya Sher, Munohurpoor, Kuchwara, Meetapoor, Nasreegunge, Arunda Oodunpoora, Kholaspoor, little,



ditto great, Bazeedpoor Chowrhur Bakeepoor, with the dearas named Mahajeeat kothee shora and kothee of Captain Peach, and kothee of court of appeal, and kothee of Johnson saheb, with the 3 annas share of Nurotumpoor, situated in pergunnah Azeemabad, zillah Patna, by annulment of a deed of sale of 17th March 1847, and to obtain a deed of sale and on its terms by right of pre-emption, and to have plaintiff's name recorded in the collectorate records as proprietor of said share of the said estates, &c., laid at rupees 2040-9-9.

The issues, which arose on the pleadings in this case, are as follow:

*First.*—Whether the plaintiffs or Abdool Ali, one of the objectors, be really the proprietor of the 1 anna share in right of which plaintiff claims pre-emption before Chand Koowur, to whom the 3 annas share has been sold by Doorga Koowur?

*Secondly.*—Whether the sale of the 3 annas share was absolute and complete, or whether Chand Koowur, contracted by a separate agreement besides the sale price expressed in the deed of sale to pay off various debts amounting to rupees 12,000, for which liens on the property sold were in existence, before taking possession, which debts remain unpaid, and whether with reference to this agreement the sale is incomplete, or of the nature of a bye-bil-wuffa?

*Thirdly.*—Whether the said 3 annas share, or any part of it had been previous to the sale in question conditionally sold by bye-bil-wuffa and otherwise mortgaged, and whether the mortgagees or holders of such deeds of bye-bil-wuffa and the like were in possession at the time of the sale in question, and if they were whether with reference to those facts the sale of Chand Koowur was valid in law, and consequently whether the claim to pre-emption is admissible?

*Fourthly.*—In the event of the claim being considered admissible, whether the steps prescribed by the Mahomedan law to be taken in order to secure the right of pre-emption were complied with?

The first of these issues was struck out of the number, issues defined in the proceeding prescribed by Section 10, Regulation XXVI. of 1814, by the abandonment of it by the defendants by whose plea it was raised. The second cannot be sustained by them, for it rests in the evidence of an agreement said to have been executed simultaneously with the deed of sale, which agreement being found to be engrossed in a stamp of inadequate value, has been already declared incapable of being pleaded in this case, and rejected accordingly.

The other two issues remain to be decided.

Three different parties have protested against the entertainment of this suit. They are Chedee Loll, who asserts the execution by Doorga Koowur, on the 8th March 1847, of a deed of bye-bil-wuffa of mouza Mooradpoor, one of the component parts of the talooka in his favor in consideration of the receipt from him of a loan of

rupees 1975, which deed he also asserts was recognized by the purchaser Chand Koowur, who besides borrowed the further sum of rupees 100, and engaged to repay it with the amount of the mortgage by her bond; but this objector does not assert his possession on the property thus mortgaged, that is, conditionally sold. Taleour Muhto who asserts his possession on a 4 annas share of the four Muhazees mentioned in the plaint under a deed of lease and bond mortgaging those properties, that is, stipulating to lease them in farm in his hands till re-payment of advances aggregating the sum of rupees 1701, and Keola Beebee, who asserts her possession on a 12 annas share, including the 4 annas share of Doorga Beebee of Munohurpoor Kuchwara, under three deeds of lease acknowledging the advance of rupees 9000, and stipulating as in the instance of Taleour Muhto, to lease the property in the hands of the objector till the amount should be paid off. On being questioned this day as to their desire to have a decision upon the matter of their protesting petitions, the vakeels of Chedee Loll and Taleour Muhto, signified their clients' desire for a decision, but the vakeel of Keola Beebee answered that she did not wish for a decision.

I find the proofs of the statements of the two first named objectors, whether tendered by themselves or by the defendants, to be insufficient. Chedee Loll filed a registered deed of byc-bil-wuffa, but did not cause the examination of the witnesses attesting it, relying apparently for its authentication, upon the fact of its having been acknowledged by Doorga Beebee in the court, on the occasion of the execution of a decree against her; the proof of such acknowledgment being the mention of the deed in the petition presented by Chedee Loll and herself, along with which petition Chedee Loll paid into court the sum of rupees 562. To prove the presentation of this petition and of the deed in court, a proceeding of the 11th March 1847, is filed in this case, and in this proceeding the petition is quoted. Now as the deed bears date, but nine days previous to that of the deed of sale in question in this case, as there was no necessity to produce it in the case in which it was brought forward, in which case no question depending on the said deed was before the court; and as the holder of the deed did not get possession in the land, it may well be suspected that the deed was a fictitious one brought forward by anticipation to defeat an apprehended claim to pre-emption, and therefore the proper proof viz., the evidence of the attesting witnesses should have been brought forward to establish the *bond fide* nature of the transaction.

Taleour Muhto has filed no proofs himself, but defendants have filed a kubooleut of 25th November 1846, said to have been executed by him. This is evidently insufficient, even had it been authenticated, which it has not been to prove his mortgage.

With respect, however, to the mortgage said to be held by Keola Beebee, it is admitted as well as her possession on the property

mortgaged, which is a portion of the estate claimed, by the vakeel of the plaintiff in reply to a question put to him by the court as recorded in the proceeding of the 30th May 1850. Now the deed of sale on the execution of which this suit is founded, contains no mention of any mortgages, and represents a sale without any reservation or qualification whatever of the 3 annas share of Doorga Koowur, and the object of this suit is that the property without any exception be delivered into possession of the plaintiff on her fulfilling the conditions of the deed of sale, which Chand Koowur had fulfilled or stipulated to fulfil. But this sale cannot be given effect to, as far as it regards the property mortgaged to and in possession of Keola Beebee. According to the precedent filed by the defendants, viz., a decision of the Sudder Dewanny Adawlut of 5th May 1836; the suit therefore for pre-emption cannot be sustained. Moreover, the futwa of the law officer of the Sudder Dewanny Adawlut expressly declares that a claim of shoofa in regard to the sale of a property under mortgage is inadmissible according to the Mahomedan law. The plaintiff has submitted a paper purporting to be an exposition of the law by other moulvees, some of whom appear to be pergunnah cazees with a view of showing that a sale of mortgaged property is legal. The purport of this document is a declaration that such a sale is legal but suspended, and that the mortgager's right is transferred to the price of the pledge so sold, meaning, I conclude, that in lieu of the pledge he will be entitled to receive from the parties to the sale the price or so much of it as may cover his claim. With reference to the above stated grounds for my opinion that the claim cannot be sustained, there can be no necessity to test the correctness of this exposition of the law, for the declaration of the law officer of the Sudder Dewanny Adawlut is not grounded on the fact of the sale being illegal, it is general and unqualified; besides, it would be impossible in this case to apply the principle that the price of the thing mortgaged is to stand in the place of the thing itself, the price being undefined, and included in the price of other property.

For these reasons I dismiss the plaintiff's suit, and adjudge her to pay the costs.

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THE 23RD APRIL 1851.

No. 41.

*Appeal from a decision passed by Moulvee Mahomed Ibrahim, on the  
10th November 1846.*

Motee Lall, (Plaintiff,) Appellant,

*versus*Tohfa Loll, himself and as Guardian of his Minor brothers and  
others, (Defendants,) Respondents.

SUIT for possession on 100 beegahs of rent-free land, called Kita  
Pone Sutraseea, situate in mouza Murauchee Bhugut, &c., by right  
of pre-emption, laid at rupees 1324-12-9.

This case came under revision, having been remanded by the  
Court of Sudder Dewanny Adawlut by their decision of the 4th  
April 1850, to be decided on the evidence adduced of claim being  
preferred immediately on knowledge of the sale. This is the point  
as stated by the above decision, which it is for the party claiming  
pre-emption to prove.

The evidence of this point consists in the depositions of Mohun  
Loll, Gunnoo Rai, Chimmun Rai and Gunput Rai. The three  
last depose that they were at Motee Loll, plaintiff's house on the 15th  
Poos, when, in the presence of Motee Loll, a person unknown to  
them, Gunput Rai said, several persons came in and gave intelli-  
gence to him that the property in litigation had been sold. Only one  
of these three, viz., Gunput Rai mentions, that the person unknown  
mentioned the price for which it had been sold, viz., 931 rupees, and  
he on being questioned, said he did not recollect whether the price  
was mentioned. Only Gunnoo Rai stated that Motee Loll and  
Rampershaud immediately on hearing the news of the sale made  
any declaration. He states that they said "this is my right." Mohun  
Rai states that the plaintiff heard of the sale on the 14th, and went  
to the seller's residence on the 15th; but as the other witnesses say  
that Mohun Loll was picked up on the way to the seller's residence  
on the 15th, and do not mention that he was present when the news  
of the sale was brought, and as Mohun Loll does not state in his  
evidence how to come to know when the plaintiff heard the news,  
it is fair to suppose he was speaking without full knowledge from  
hearsay or the like. As there is but one witness to the immediate  
declaration, and the other two, who heard the news announced, are  
silent regarding it, I cannot deem the proof complete. I therefore  
dismiss the appeal, and confirm the decision of the principal sudder  
ameen, and adjudge the costs to be paid by the appellant.

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THE 29TH APRIL 1851.

No. 9.

*Original Suit.*

Meer Abdoolla and, after his decease, Musst. Ameer-oon-nissa, Syud Mehede Ali Khan, Kasim Ali Khan and Syud Lootf Ali Khan his heirs, and after decease of Mehede Ali, Syud Vilayut Ali, Furzund Ali and Usmuh-oon-nissa, (Plaintiffs,)

*versus*

Sooltan Jan, (Defendant.)

SUIT for the recovery of advances, bearing interest at 1 per cent. made between the 14th Aughun and 24 Phlgoon 1252 Fuslee, with the interest thereon according to a khata, laid at rupees 8224-14-7, of which 5575 was principal borrowed.

Defendant denied the receipt of the advances and opening any account, saying he had no property at the time, the rents of which would give him something to draw against in the hands of the plaintiff, and it is incredible that he should have continued to permit him to draw repeated sums without any thing coming in.

The issues were defined to be whether the defendant opened an account with the house of plaintiff and borrowed the sums amounting to 5575 rupees or not, and the plaintiff put into court a copy so called of the buhee-o-khata, which is found to be in the form of an account against defendant, said to be entered on the 311th leaf of the lakha buhee, and it contains references to the several places in the same or some other buhee, wherein the items paid out and debited in the account to defendant are charged. Two witnesses were cited to prove the buhee-o-khata: they are Gokul Das and Dabee Das, gomashtas, and the copy of account above mentioned being shown them, they identified it as the account written by Gopal Lall, gomashta. This gomashta was not named as a witness, and it does not appear why not, and the buhee, or book, or books, which the two witnesses were called to prove, was not produced in court, nor was any application made to the court for its examination. The abovenamed witnesses entered into a long narrative, affirming that defendant opened the account and received sums of money at different times through different persons from the kotee, but neither the vakeels nor the presiding judge. At that time the case was before Mr. DaCosta, principal sudder ameen, deemed it essential to clear up the important question left doubtful on the evidence of Debee Das, as to the source of that witness' knowledge respecting the opening of the account, whether namely, it was opened in that witness' presence, or whether he spoke from hearsay. In like manner whether Gokul Das witnessed the payment of the several sums said to have been drawn by the defendant through his servants is left doubtful. This point also remained doubtful in the

deposition of Dabee Das until he was questioned about it, and then answered that he was sometimes present and sometimes not. In the like manner both say that the sum of 2500 rupees was paid to Ushruff Ali on his presenting a rooka; but it is only Dabee Das who on the question being asked said, that Ushruff Ali, in his presence, wrote an acknowledgment of receipt of the money on the said rooka. It is doubtful whether the rooka was presented in the presence of the other witness, and one of the vakeels of the plaintiff is the Government pleader, who ought to know something more of what evidence consists in. I find the rooka, which should be a voucher for this item in the account, has not been presented in court, though one of these gomashas says, the document is in the custody of the mooneeb, or head gomasha of the concern. It is unnecessary to say much in support of my judgment, that this evidence is totally insufficient to prove the correctness of the account or the receipt of the money by defendant. The account ought to have been proved by the evidence of the gomasha, who extracted it out of the books to be a correct copy. It ought to be proved to be genuine by comparison with the books which again should be proved by the evidence of witnesses to be the books of the firm. When payments were made on written orders those should be produced as vouchers in support of the payments; when without written orders, there must surely have been some sort of acknowledgment by the messenger sent to receive the money at least, if not by the principal. Nothing in the nature of a voucher for the charges has been brought forward.

The proof of the account having failed, I do not think a decree can be given on the statements of witnesses, who pretend to have been employed by the plaintiffs, being in their service at the time to demand payment of the money, although they do say that the defendant promised payment. The whole statement of the plaintiffs is most improbable, for people generally open an account with a banker or mercantile house as was lately observed elsewhere, in order to deposit rather than to borrow money; and as far as my experience goes, I think any mahajan, to say nothing of the successful astute head of the firm whom the plaintiffs represent, would have preferred having the security at least of a bond when about to commence a series of advances which were not to be met by immediate deposits of corresponding amount. In fine if the first advance was made in the expectation of an immediate repayment, the second would not have been made when no such deposit had been forthcoming without a bond for that as well as the balance already due, deeming plaintiffs to have utterly failed in establishing their claim, I dismiss the suit, with all costs payable by the plaintiffs.

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THE 30TH APRIL 1851.

No. 4.

*Original Suit of 1850, formerly on the list of the Principal Sudder Meean, as No. 76 of 1848.*

Syud Mahomed Bakur, known as Nawab Mirza, Plaintiff,

versus

Anunt Ram and Talib Ali, known as Sooltan Jan, Defendants.

SUIT for re-payment of a debt on bond, laid at rupees 8360-0-0.

The plaintiff states that Khaja Talib Ali, defendant, borrowed 8000 rupees, and executed a bond, dated 14th March 1847, in the name of his servant Anunt Ram, agreeing to repay the money in six months from date with interest at the legal rate, of 1 rupee per cent. per mensem. Besides which he also executed a security bond and caused both deeds to be registered, and that the said defendant paid only 920 rupees at different times, so that by account the sum of 8360 rupees principal and interest is still due. The defendant Talib Ali admits execution of the deeds, and contracting the loan, but urges that plaintiff deducted on the 15th Rabee Oosanee from the sum agreed to be advanced 120 rupees, on account of interest of the six months in excess of the legal rate, viz., at 4 annas per month, and 400 rupees on the false pretext of wages of gomash-tas; and caused defendant the loss of rupees 91-10-6, in the premiums of two hoondies, which he gave defendant in part payment of the advance, so that the sum repaid amounts according to plaintiff's own account to 1531-10-0 instead of 920, for which he gives credit, but, moreover, he has forfeited principal and interest by attempting to evade the provisions of the usury law.

In reply plaintiff denies deducting any thing from the advance, and states that it was paid on the date of signing and delivering the bonds. One proof that there was no illegal stipulation in regard to interest was that defendant wrote to several persons, viz. Mirza Abbas and Mirza Kadir Ali and others, requesting them to become witnesses to the bonds and in his note to them mentioned the legal rate entered in the bonds as the rate of interest which he had stipulated to pay. That defendant having purchased the hoondies from him, must, of course, pay for them at the current rate and as the rate of exchange is always fluctuating, he must stand the loss, if any, sustained in the sale of them. Defendant purchased them from him at the rate of 1-8 per cent., amounting to 50-10 discount; but plaintiff Nuthce received nor deducted any thing on account of any gomash-tas. The 8000 rupees was advanced in cash 4676-11-1, and hoondies for 3378-14-11, charged to defendant at the rate aforesaid, at 3323-4-11. The defendant in his kood-jowab reiterates the statements of his answer, and says that the loan was advanced in several sums all after the delivery of the deeds.

The points of decision, i. e., the material issues of law and fact arising out of the pleadings as defined by the principal sudder ameen Lalla Shunkur Loll, before whom the case was first brought on for hearing are, did the plaintiff deduct the sum of 120 rupees from the principal agreed to be advanced by way of loan as a means of obtaining interest at 1-4 per cent. per month, and 400 rupees on the false pretext of wages of gomashtas, and if so, is the suit admissible? Secondly, is the loss of the sale of the hoondies, if sustained, chargeable to the plaintiff or not?

The plaintiff puts in the bonds, dated 14th March 1847, and registered 17th of the same month and called witnesses to prove them. The evidence of Sukhawut Ali, in plaintiff's service at the time, is that he witnessed the deeds on the acknowledgment of Anunt Ram and Talib Ali Khan, after they had been executed not in witnesses' presence and before the payment of the loan acknowledged to have been received; that on the deeds being brought to plaintiff in witnesses' presence for the money; plaintiff demurred to receive them till they had been registered, hereupon a rooka was given under the signature of Anunt Ram, and with the seal of Talib Ali Khan affixed in lieu of the deeds pending then being registered, and the 8000 rupees partly in cash and partly in hoondies, according to the request of Anunt Ram and Bahadoor Ali were paid in witnesses' presence to the latter. According to the evidence of Ahmud Hossein, whose signature appears as a witness to the security bond, neither was the money paid nor the bond signed nor delivered in his presence; but he witnessed it upon the sight of a note addressed by Talib Ali Khan to himself and others, which note produced by the witness on the trial; and the receipt of the money, Talib Ali Khan acknowledged afterwards at a cock fight to witness. He stated further that it was on being sent for by the plaintiff that he went to his dwelling and then witnessed the security bond; that plaintiff on asking him to sign said a rooka had been sent by Sooltan Jan addressed to him and others, and that he got the rooka from Bahadoor Ali. Mirza Mahomud Abbas deposed to witnessing the bond and security bond on the same grounds as last witness, and besides, the bond on the acknowledgment of Anunt Ram. He also states that the money was paid on the same occasion, meaning it is to be inferred to Anunt Ram and Bahadoor Ali, and that Talib Ali Khan made the same acknowledgment to him as to the last witness on the same occasion, viz., at the cock fight mentioned above. Mirza Kadur Ali witnessed the malzaminee only, under the same circumstances, and deposes like Mahomed Abbas to witnessing payment at the same time. Alee Muzhir put his signature as witness to both deeds on the acknowledgment of Talib Ali Khan made at his own house to the effect that he had borrowed the money. Alee Buksh, Kurum Khan and another Kurum Khan, peadas Dhumsan Putwaree, Ram Ratun



gomashita, Bhoopnarain, servant to plaintiff, deposed to having witnessed the payment to the defendant, Talib Ali Khan, of the cash and hoondies to the several amount stated by the plaintiff, and Ameer Jan deposes to having been present at plaintiff's house, when those amounts were paid or sent with Anunt Ram and Bahadoor Ali, who had brought a rooka from the aforesaid defendant. Plaintiff has also tendered a rooka in the form of an order on Beharee Loll, gomashita of plaintiff, for the payment of 600 rupees on account of the interest at 1 per cent., in support of that item of payment at foot of the plaint; but this document, being on plain paper, has been this day returned to the plaintiff, being of the nature of an order for payment particularized in Schedule A, annexed to Regulation X. of 1829, and not being among the exemptions from stamp duty. It is perhaps unnecessary to pronounce on the sufficiency, or insufficiency, of this evidence to establish the fact of payment of the amount of the loan to the defendant, because he having acknowledged the execution and delivery of the bonds, which acknowledge the receipt of the full amount, the *onus* of proving the deductions from the principal sum by way of securing the illegal interest is upon the defendant, and in this attempt, he has, in my judgment, signally failed. The witnesses being destitute of credibility, many being his own servants, and many having given the most suspicious and incredible testimony not only in this case but in other cases,\* which at the instance of the defendant's vakeels have been tried simultaneously with it. The following brief remarks may suffice to show how unworthy these witnesses are of all credit or attention. Ashruf Ali Khan, Gholam Abbas, Jumayeeut Khan, and Goree Shunkur are servants in the rank of peadas, chobdars, &c., either of the defendant or his wife. Ushruf Ali and Bahadoor Ali pretended to have witnessed the bond for 5000 rupees in the suit, No. 6, between the same parties, which will probably be decided this day, whereas their signatures have not been found upon the bond. Ashruf Ali pretended to have witnessed the bond for 2000 rupees in the suit, No. 7, though his signature is not found upon it, and Bahadoor Ali declared that others had witnessed the same bond in his presence, whose signatures are not found upon it. Sheikh Mokarim, as he called himself in this case, and at the beginning of his evidence in the suit, No. 6, between the same parties, being questioned by the defendant's vakeel as to the name which he had given to the stamp vender, from whom according to his evidence in that suit he had purchased the stamp on which was engrossed the bond in the same suit, said, in reply, to a leading question of the vakeel that he was called Mokazim as well as Mokarim, and had given both names to the stamp vender to choose from. The other witnesses examined for defendant are Jergunnath, also his servant, who proves nothing, Jaffur Ali, Umeer Ali and Khooda

Buksh. The one fact among a multitude of facts detailed by Jaffur Ali of which what are stated from hearsay, and what from his own knowledge, does not clearly appear the one fact capable of aiding. The defendant's plea is that he was sent by the defendant to plaintiff to protest against the deduction of 120 rupees, interest over and above the legal rate, and 400 rupees mihnutana; that he did protest, but that plaintiff would not listen. This was after realization of the greater part of the money; but how this witness knew of the receipt of these several items deposed to by him, he does not explain: moreover, as his evidence is vague as to whether he witnessed the delivery of the bonds or not, it cannot prove that what he did witness took place at, or after the delivery; in short that plaintiff in lieu of the bonds gave a certain amount of money short of that mentioned in them. Besides which his confused and prolix narrative mentions a number of payments at different times not specified, and can never prove the allegation of the answer that the deduction was made on the 15th rubees-oos-sanee. It may be here remarked also that the kud jowab of the defendant, alleging the payment of so much of the money as was paid at various times after the delivery of the bond, does not quite coincide with that allegation. Putting that however out of sight, it never can be believed that defendant would part with the bonds without receiving any part of the money. If such pleas were seriously entertained, the value and efficacy of all bonds is at an end. Sheikh Ameer Ali and Khooda Buksh deposed that Anunt Ram and Bahadoor Ali came into plaintiff's dwelling while they were there buying cloth, and remonstrated ineffectually with plaintiff against the said deduction. I cannot believe this evidence, could it even establish any thing of consequence which it does not. I therefore decree the payment of the plaintiff's claim, with interest on the principal sum borrowed from the date of institution to this date, and interest on the sum so decreed, with costs and interest to the date of payment of the whole at the usual rate of 12 per cent. per annum from the defendant.

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THE 30TH APRIL 1851.

No. 5.

*Original Suit of 1850.*

*Formerly on the List of the Principal Sudder Ameen as No. 84 of 1848.*

Syud Lootf Ali, Plaintiff,

*versus*

Khaja Tabil Ali *alias* Sooltan Jan, Defendant.

SUIT to recover payment of a debt on bond executed by the defendant, on the 2nd January 1847, for the sum of rupees 20,000, with interest after crediting payments, laid at rupees 23,226-10-8.

Plaintiff pleaded that the defendant borrowed the amount of the bond from him through the house of Bolakee Lall, mahajun of Patna, on the above date, and paid only 500 rupees on the 8th Sawun 1254 F., and the interest which was agreed to be paid at 1 rupee per cent. per month. The agreement was that he should pay in six months. The defendant denying the contraction of the debt, and saying that only twelve days before the date of the pretended bond, defendant's father had borrowed from this very plaintiff 25,000 rupees, giving him a lease ijara zur peshgee made out in the name of defendant after which, and previous to the 2nd January 1847, defendant went to reside with his father in Saheb Gunge (Gyah) and was not at Patna, when plaintiff alleges he contracted this debt, pleads that the signs of the falsehood of the claim, are, that whereas plaintiff took a lien on property to the value of nearly one lac of rupees as collateral security from defendant's father for the 25,000 rupees advanced to him, and registered the deed taken from him, he neither took any security of property from defendant, who possessed none at that time nor even registered the bond, having, moreover, advanced the same defendant on a previous occasion only 4,000 rupees, on the security of valuables to the amount of nearly 50,000 rupees, and besides these he took in pledge from him other things: and the reason of this false claim is, that defendant objected to pay interest at 1-8 per cent. on the loan of 25,000 rupees, taken by his father as already mentioned. The plaintiff rejoined, denying the inference drawn from the facts of the bond not being registered and the security of real property not being taken, and referring to three other loans made to, and bonds taken from him under the same circumstances, denying the facts of his having no real property to pledge, of his having pledged personal property in security of other loans advanced to him of his absence from Patna—plaintiff's receiving an illegal rate of interest from his father, &c. The defendant finally replied, urging that the two deeds unregistered, which he has acknowledged, were of small amount, viz., 5000 and 2000 rupees respectively, and the decision of the Sudder Dewanny Adawlut in a case in which plaintiff's father Meer Abdoolla was plaintiff against Gokul Das, defendant, shows the value which is to be accorded to such unregistered bonds.

The issues in this case are whether the defendant borrowed the principal of the money claimed, and executed and delivered the bond, or whether he was at Gyah on the date of it, and therefore could not have done so?

The bond though not registered has been duly proved by the testimony of seven of the witnesses whose names are in the margin, as witnesses to have been executed and delivered, and the money expressed therein paid in their presence by and to the defendant. There is nothing to shake the credit of their testimony except the

evidence, if such it can be called, which has been put in on the part of the defendant. The vakeels called a crowd of witnesses and caused the examination of several others at Gyah. Of those examined here, Sheikh Gholam Abbas, whose name appears among the witnesses in suit No. 4, just decided; Sheikh Hosanee Mudaree Khan, Jooggun, and Meer Muksood Ali, are defendants or his wife's servants. They and the other witnesses, resident of Patna, declare that Sooltan Jan left Patna in their sight on the 11th of the month of Mohurrum, of the year in which the bond is dated. Most of the witnesses resident at the time in Gyah or Saheb Gunge, deposed to seeing him at Saheb Gunge on the 12th of the same month. They belong to the humble classes, and I much doubt their recollecting the date after two years had elapsed, when the men of business who have any reputation to lose, viz., the vakeels of the Behar courts, who have been examined, hesitated so much about this important point as to make their testimony of no use to the defendant. Luchmun Sahae, a vakeel in the moonsiff's court, in reply to the leading question, whether he saw defendant at Saheb Gunge on the 2nd January, could only say that he saw him there at the end of Poos or beginning of Maugh. Now the 1st Maugh corresponds to 2nd January and 13th Mohurrum, and if this witness only saw defendant on the 2nd Maugh, it was quite possible for defendant to have been at Saheb Gunge on that day after executing the deed at Patna on the 2nd January. Hossein Buksh, vakeel of the principal sudder ameen's court, in reply to the same leading question, and another to the effect of whether he had written any rooka to him on any day and what day, denied seeing him, but admitted writing a note to him supposing him to be at Saheb Gunge at the time. A rooka being afterwards, on a second examination, shown him, which bears date 2nd January, he acknowledged it as having been written by his own hand. This rooka is a complaint against the defendant's agents, who, the writer says, would not carry out defendant's orders for the writer to be appointed his vakeel. The answer, verbal, assuring him that he would be appointed in all defendant's cases was, witness says, brought him by one of the agents. Moreover, in the note he promises to wait on the defendant in the evening, but never did so, and witness is now installed as his vakeel. This would be suspicious were the note single, but another note of the same date has been acknowledged by another vakeel who took the same pains, as the last witness, not to commit himself by saying the defendant was at Saheb Gunge on the 2nd, the note being shown him he is asked whether he sent that note on the 2nd. He replied he does not recollect very well.

Question.—What, don't you recollect whether I sent it immediately the mohirer wrote it, or after a delay of some hours?

Question.—Did you cause the mohirer to write it on the 2nd January or other date? I do not remember, but it is my custom

to sign a paper as soon as the mohirer has written it. Now it happens that the date itself is in the handwriting of this witness himself. He was taken asked whether in his opinion defendant was in Saheb Gunge on the 2nd January, and whether he (witness) saw him there that day or the next, or the second day after, to which leading questions he replied he did not recollect. He said, moreover, that he thought it must have been sent to defendant at Saheb Gunge, judging from the contents. Now the contents were a complaint against the defendant's employers for not paying him his allowance, and it is hardly credible he should not have gone to defendant in person on such a matter, considering how likely it was the said employers might feel inclined to suppress a written complaint against them; but this witness has no recollection of going. I cannot resist the conclusion that both these rookas were written for the occasion, viz., that they might in some sort enable these witnesses to swear to a date with what they might consider a safe conscience. Finally, plaintiff has brought forward a document of equal value with their rookas, which after all can only prove that the witness thought defendant was at Gyah, and plaintiff's document is not open to any suspicion of collusion. It is an extract from the register of the post office of Patna, containing three entries of letters to the address of defendant, received at Patna on the 1st, 2nd and 3rd January, and despatched from Gyah on the 31st December, 2nd and 3rd January. The writers of these letters, of course, supposed him at Patna when the witnesses in this case declare he was at Saheb Gunge. Now this attempt of the defendant to support his case by some show of respectable testimony, failing in so signal a manner, indicates the degree of credit which may be accorded to the rest of the testimony he has adduced. I do not hesitate to decree the claim, with interest on the principal sum borrowed from the date of the institution of the suit to this date and interest on the whole sum, with the costs of suit and interest thereon from date of decree to the date of recovery.

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## ZILLAH PURNEA.

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PRESENT: D. PRINGLE, ESQ., JUDGE.

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THE 2ND APRIL 1851.

Appeal No. 4 of 1850.

*Sudder Ameen, Mr. Noney.*

Luchmun Bhugut and others, (Defendants,) Appellants,

*versus*

Bhugoo Ram Bhugut, (Plaintiff,) Respondent.

*Brij Lal Singh—Vakeel for Appellants.*

*Bamachurn—Vakeel for Respondent.*

SUIT for rupees 413, balance due in account.

The respondent bringing this action against Luchmun Bhugut and the heirs of Pihlwan Bhugut, to recover the said amount, as due in account, closed 1904 Sumbut, the appellant disclaiming partnership with Pihlwan Bhugut, and on the part of his heirs, pleading payment in full. The sudder ameen, finding the partnership established by the books and evidence thereto; moreover, the grant of certificate to the appellants jointly under Act XX. of 1841, makes award accordingly.

In appeal, it is urged, that the last entry in the books, as alleged to account of appellants, is in 1904, though his transactions with respondent had long before ceased, this being inserted merely to render the suit admissible.

### JUDGMENT.

On this case being first heard, the books of the respondent for the years antecedent, or from 1891 to 1904, were called for; the fact alleged by appellants, of a solitary entry appearing to his account in 1904, being deemed suspicious; which having been produced from 1895 to 1902, it is found that the dealings between the parties were uninterrupted during this period; removing all suspicion as to the authenticity of the entry in 1904, the appellant's vakeel merely urging that the books were in the power of the respondent. The appeal is therefore dismissed, the award of the sudder ameen being confirmed.

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THE 2ND APRIL 1851.

Appeal No. 3 of 1849.

*Principal Sudder Ameen, Moulvee Rooknooddeen.*

Raja Enayut Hossein, (Plaintiff,) Appellant,  
*versus*

Jhober, (Defendant,) Respondent.

*Seetulchunder, Afzul Ali and Gopee Mohun—Vakeels for Appellant.*

*Bamachurn and Gobind Chund—Vakeels for Respondent.*

SUIT for possession and mesne profits, laid at rupees 1625-13-4.

This is an action to recover possession of bs. 143-4-3 of land in Gutch Tipooa; first acquired by respondent, it is alleged, under an award of Act IV. of 1840, on the plea of its being included in the resumed jhageer of Ibrahim Hossein, for which settlement had been made with respondent, who replies that Gutch Tipooa, containing bs. 125, 18 ks., was acquired by his ancestors in 1179, under a kuballa of Azhur Ali, and his son Ibrahim Hossein, as affirmed by seal of appellant's grandfather and registry of the kazee, and has continued in possession of his family ever since, who were accordingly admitted to engage for the lands, on the resumption and settlement of Ibrahim Hossein's jhageer.

The appellants, in replication, contending that there is no mention of Gutch Tipooa, in the resumption decree.

The respondents, in rejoinder, producing copy of this, declaring Gutch Tipooa, talook Jehangeerpore, the lakheraj land of Ibrahim Hossein, to have been for generations in possession of the respondents, but for which as no sunnud is forthcoming, it is resumed accordingly.

The principal sudder ameen finds appellant's claim to the land in dispute to be without foundation, the respondent asserting his possession as milikdar, and producing a kuballa for bs. 25 of land in Tipooa, the milik of Ibrahim Hossein, the settlement for which on its resumption was concluded with respondent, as affirmed by amulnameh granted on the 16th February 1846, and afterwards maintained by award under Act IV. of 1840, with whose possession so conveyed therefore, the civil court cannot interfere. As respects the discrepancy in the copies of the resumption decree, it is observed, that this has evidently been caused by the khas mehal mohurrir, who thus sought to ingratiate himself with both parties; the original decree, then sent for, being found in that place mutilated and illegible; though for the reasons before stated it is added, this would not affect respondent's title, which is recognized throughout, as that of Ibrahim Hossein, and his possession undisputed; nor does appellant allege that any other lands were so conveyed to respondent, only asserting his claim to those in dispute as included in his zemindaree, whose suit is therefore dismissed.

In appeal, it is contended, that the kuballa for Gutch Tipooa, is a forgery; respondent having formerly given a kubooleut for this, who, according to the measurement of Shouk Lal Ameen, only got 8 beegahs as his share in 310 beegahs, the resumed milik of Ibrahim Hossein, in talook Jehangeerpore, on which grounds the deputy magistrate made an award in appellant's favor, which the sessions judge reversed in appeal; the mention of Tipooa in the copy of the resumption decree being declared an interpolation.

This appeal having been heard on the 31st July 1850, a local investigation by the moonsiff of Kishengunge was sanctioned, to ascertain the identity of the land in dispute, with that conveyed by amulnameh of the revenue authorities to respondent, whose report states the question to hinge, on the measurement recognized, whether Shouk Lal's, or Jhooba Lal's; the land in dispute being included in the latter, but not the former.

#### JUDGMENT.

The appellant here impugns respondent's title under the kuballa produced, and contends that the land in dispute was not conveyed to him by the resumption decree; but without adverting to the external evidence of that deed being genuine, its authenticity is placed beyond a doubt, by the fact of the respondent being found in possession of Ibrahim Hossein's milik; no where denied, when this was resumed. And as the settlement and amulnameh granted the respondent are found to proceed on the measurement of Jhooba Lal, that of Shouk Lal being rejected, there exists no ground, as declared by the principal sudder ameen, on which this court can interfere with possession so conveyed. The appeal is accordingly dismissed.

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THE 3RD APRIL 1851.

Appeal No. 1 of 1850.

*Sudder Ameen, Mr. Noney.*

Meerghuseeta, (Defendant,) Appellant,

*versus*

Sheikh Dooraboolah, (Plaintiff,) Respondent.

*Afzul Ali—Vakeel for Appellant.*

*Bamachurn—Vakeel for Respondent.*

ACTION for conveyance on a bill of sale, laid at rupees 675.

The respondent (plaintiff) claiming possession of mouza Luchmeepore Lalchund, under a kuballa granted by appellant, the 11th Aughun 1256, who admits execution of the deed; but pleads that only rupees 40, the earnest money, was received by him respondent, by an ikrarnameh, dated the 2nd Maugh 1256, engaging



to make good the balance rupees 635, in five days, which not being fulfilled, conveyance had been withheld.

The respondent, in replication, exhibiting appellant's receipt for the entire amount as granted simultaneously with the kuballa.

The sudder ameen, finding the kuballa and receipt on the part of the appellant duly established, rejects the ikrarnameh, and the evidence in support of it.

In appeal the former plea in justification, is revived by the appellant.

#### JUDGMENT.

As the witnesses to the kuballa and receipt in this case are the same, and the former is admitted by the appellant, it does not appear on what legal grounds he can repudiate the latter, whose appeal is therefore dismissed, and conveyance under the deed ordered to take place accordingly.

THE 5TH APRIL 1851.

Appeal No. 6 of 1850.

*Sudder Ameen, Mr. Noney.*

Sheikh Amanutoollah, (Defendant,) Appellant,

*versus*

Sheikh Geenoo and Assudoolah, (Plaintiffs,) Respondents.

*Bantachurn—Vakeel for Appellant.*

*Seetulchunder—Vakeel for Respondents.*

ACTION of damages for trespass of cattle, laid at rupees 557.

The respondents (plaintiffs) sue for damages, on account of lands so grazed by appellant's cattle in 1252, 1253, 1254, and 1255; who plead not guilty. The sudder ameen, on the local enquiry, and evidence adduced, finding the trespass established, and awarding damages at the rate of 2 rupees and 12 annas per beegah, according to the injury thus ascertained.

In appeal, the trespass is again denied, and objection taken to the local enquiry, while the rate so fixed, it is contended is excessive.

From examination of the record it is found, that the respondents first brought their suit for trespass before the moonsiff in 1252, when a decree was given in their favor. The appeal from which was dismissed by the principal sudder ameen, and the respondents (plaintiffs) nonsuited, having omitted to include the whole period embraced by their claim, as revived in the present suit.

#### JUDGMENT.

The respondents' averment as to appellant so forcibly grazing their lands, during four successive years is, I consider, unworthy of credit, as may be inferred from their own answer setting forth

as the excuse, for not putting a stop to it; that appellant promised to pay rent for the same; doing away with the trespass, by such recognition of his acts; it being imperative on respondents, in that case, to take an engagement from appellant. In modification of the award of the lower court, therefore, I decree rent for the first year only, or 1252, as originally awarded by the moonsiff.

THE 5TH APRIL 1851.

Appeals Nos. 7 and 8 of 1850.

*Sudder Ameen, Mr. Noney.*

Sheikh Jan Mohamed, (Plaintiff,) Appellant,

*versus*

Doorgapershad and Ruttenath, (Defendants,) Respondents.

*Seetulchunder—Vakeel for Appellant.*

*Bamachurn—Vakeel for Respondents.*

CLAIM of damages for withholding receipt, laid at rupees 342.

The appellant (plaintiff) claiming credit for rupees 217, on account of payments as follows: on the 20th Bhadoon 1256, rupees 25, on the 15th Aughun, rupees 25, and on the 22nd Phalgoon, rupees 167; receipts for rupees 46 only being granted by respondents, who, in answer, admit the payments on the first mentioned dates only, the appellant bringing three witnesses to prove the payment of the 22nd Phalgoon, so denied.

The respondent, it is seen, was the first to bring a summary suit against appellant, on the 5th March 1849, who on this lodged a cross suit, that under review, for receipts, on the 16th April following, the former suit being in consequence transferred to the sudder ameen's file, which being thus simultaneously disposed of, the sudder ameen finds the cross suit to be fictitious and designed merely to defeat the respondent's claim, which is decreed accordingly, that for damages being dismissed.

In appeal the evidence of witnesses is again cited in support of the payment on the 22nd Phalgoon, to which respondents oppose, the improbability of such large sum being received without acknowledgment, or any entry whatever in the zemindaree accounts, on the 22nd Phalgoon, rupees 20, paid by appellant on the 21st having been duly acknowledged, and the respondent Ruttenath tehseeldar, setting out the same evening for Barsoe, where he remained till the 30th.

#### JUDGMENT.

The probabilities in this case are certainly against the appellant's averment of so large a sum paid on the 22nd Phalgoon, remaining unacknowledged; seeing the summary suit was lodged by respon-

dent on the 23rd idem, and as it is shown that the appellant was warned of respondent's intention, it was imperative on him to obtain an acknowledgment of such payment at the time, or else to withhold it, whose appeal, in this number, and that which follows, is on these grounds dismissed.

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THE 7TH APRIL 1851.

Appeal No. 9 of 1850.

*Sudder Ameen, Mr. Noney.*

Muniram Mundul, (Plaintiff,) Appellant,

*versus*

Heirs of Shibdyal Das and Goluknath, (Defendants,) Respondents.

*Bamachurn and Seetulchunder—Vakeels for Appellant.*

*Gopee Mohun and Afzul Ali—Vakeels for Respondents.*

ACTION of bond debt, laid at rupees 798-8-6.

The bond, executed the 27th May 1846, for rupees 500, being in the name of Shibdyal Das and Goluknath, as surety, of which appellant admits payment of rupees 200, by deceased, as endorsed thereon, and rupees 68 by his heirs, of whom Jeebdyal and Nundlal, brothers of Shibdyal, disclaim their liability. Undharoo, his son, averring that a further payment of rupees 222, in gold-mohurs, and rupees 77, value of an elephant, was made to appellant, the balance rupees 13 remaining with a third party; appellant, having demanded  $\frac{1}{2}$  an anna in the rupee as interest, and on this plea detaining the bond.

Goluknath does not reply.

The sudder ameen, finding the payment of 12 goldmohurs at rupees 18-8 each, established by evidence of witnesses, also the transfer of an elephant valued at rupees 77, awards rupees 43-3-3, as the balance due to appellant, whose objection, as to these sums not being endorsed on the bond, is overruled; certain additional witnesses, named by respondent, being kept back, it is thus supposed, by appellant. The co-defendants Jeebdyal and Nundlal being relieved.

In appeal, the stipulation in the bond, that only sums endorsed thereon will be credited, is again cited, while the circumstance of the rupees 68, paid by respondents, being so entered, notwithstanding there was no record of the rupees 222 thus said to have been received previously, is referred to, as conclusive, for rejection of the averment as to such payment.

#### JUDGMENT.

Though the parole evidence goes to prove that 12 goldmohurs and an elephant were received by appellant from the deceased, his

heirs cannot, under the stipulation found in the bond, claim credit on this account; that urged in appeal, as to their payment of rupees 68, subsequently, as duly acknowledged by endorsement on the bond, notwithstanding there was no record of the previous transaction, removing all doubt as to the appellant's title to recover the amount here claimed, in whose favor an award is made accordingly, with abatement of rupees 256-7-9, being interest erroneously calculated, the decision of the sudder ameen being thus reversed.

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THE 7TH APRIL 1851.

Appeal No. 14 of 1850.

*Sudder Ameen, Mr. Noney.*

Muhunt Ramshurn Dass, (Defendant,) Appellant,

*versus*

Dergopal Chowdhry, (Plaintiff,) Respondent.

*Bamachurn and Seetulchunder—Vakeels for Appellant.*

*Brij Lal Singh—Vakeel for Respondent.*

CLAIM for rupees 553-13, value of paddy crop.

This case was remanded on the 24th January 1850, as reported at page 8 of the Purnea decisions for that year; it having been alleged by the respondent's vakeel, that the summary suit in which appellant had obtained a decree against respondent, was adjusted by receipt obtained from the former which he was ready to produce.

This being exhibited in the lower court the award in respondent's favor has been affirmed by the sudder ameen.

In appeal, it is objected, that the razeenameh was given by appellant's mooktear in collusion with respondent.

#### JUDGMENT.

The plea thus advanced in appeal for the first time, being wholly inadmissible, it only remains to affirm the award of the lower court.

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THE 7TH APRIL 1851.

Appeal No. 17 of 1850.

*Sudder Ameen, Mr. Noney.*

Raja Ramkoonur, (Defendant,) Appellant,

*versus*

Hunoman Mundul, (Plaintiff,) Respondent.

*Seetulchunder and Muneeroodeen—Vakeels for Appellant.*

*Lala Fukeer Lal—Vakeel for Respondent.*

ACTION of damages for illegal distraint, laid at rupees 412.

This case was remanded on grounds shown at page 7 of the Purnea decisions for January 1850. The additional enquiries thus directed to be made having been completed, the sudder ameen decides that although five witnesses, including the putwarry, depose in support of appellant's claim against respondent, their statements are unworthy of reliance, as they are the dependents of appellant.

In appeal, it is contended, that this is no valid ground for rejection of their evidence, and that appellant is entitled to a verdict.

#### JUDGMENT.

It is seen from the evidence of the putwarry, gorait, and other witnesses thus examined, also from the hustbood and jumma wasil-bawkee papers, with notice of demand served on respondent at the time of the attachment; that this was for balance of rent then due by respondent; in repudiation of which, the absence of a kabooleut, as pleaded by him, is inadmissible, seeing many ryots so cultivate, while the false charge of theft so brought forward, only goes to support appellant's averment; I reverse the decision of the lower court, on these grounds, a decree being now given in favor of the appellant.

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THE 17TH APRIL 1851.

Appeal No. 4 of 1850.

*Principal Sudder Ameen, Moulvee Rooknooddeen.*

\* Raja Enayeut Hossein, (Plaintiff,) Appellant,

*versus*

Kartick Lol, (Defendant,) Respondent.

*Mirza Ahmed and Bamachurn—Vakeels for Appellant.*

*Seetulchunder and Gopee Mohun—Vakeels for Respondent.*

CLAIM, for possession and mesne profits, laid at rupees 1262-1-8.

The plaint sets forth that the ancestor of appellant acquired under bill of sale, dated 1245, 46 beegahs lakheraj land in mouza Singhat, for the sum of rupees 460, after whose death the deed

being mislaid, during the family divisions, a sooruthal of the transaction was prepared and duly registered, but the ryots opposing appellant's claim, he was dispossessed in 1253 under Act IV. of 1840, from which the present action dates.

The respondent, in reply, filing kubooleuts taken from the ryots from 1249 to 1252, as already exhibited in a suit before the moonsiff, and a decree, for rent thus obtained, on the 28th June 1845; a suit of the ryots withholding this, being for the like reason dismissed by the collector in 1844; appellant at no time opposing. Moreover, that the mother of respondent, who appears as a vendor in the said kubooleut, died in Aughun 1240, which deed, had it existed, would certainly have been registered.

The principal sudder ameen dismisses the appellant's suit, first, as the original deed would have been registered, that of a sooruthal being of no value; secondly, as the pottahs and kubooleuts produced by appellant prove nothing, being in the name of appellant's khunsamah; thirdly, as respondent's possession at that time is established by the moonsiff's decree, and others in summary suits; appellant at no time appearing to contest this.

In appeal, it is urged, that Deedad Hossein, appellant's ancestor, would not have laid fraudulent claim to such land; the witnesses who attested the sooruthal, deposing to the execution of the kuballa, so lost on the death of his ancestor.

#### JUDGMENT. . .

In the absence of any deed supporting appellant's title, the proofs to adverse possession furnished by respondent, under decrees obtained sixteen years ago, and affirmed by the award under Act IV. of 1840, are conclusive for rejection of appellant's suit; the judgment of the principal sudder ameen being accordingly confirmed.

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## ZILLAH RUNGPORE.

PRESENT: T. WYATT, Esq., JUDGE.

THE 9TH APRIL 1851.

No. 30 of 1850.

*Appeal from the decision of the Moonsiff of Olipore, dated the 8th January 1850.*

Juggonath Sirkar, (Defendant,) Appellant,

*versus*

Mussamut Metun Beebee, wife of Seif, deceased, and Pera Nusha, father of Seif, (Plaintiffs,) Respondents.

THIS suit was instituted by the respondents to recover possession from defendant of eleven beegahs, seventeen cottahs of land, stated to have formed a part of the jote of Gunga Pershad Muzumdar, bearing a yearly rent of forty rupees, situated in the permanently settled estate of Baharbund, sold to the plaintiff's husband Seif for sixty-eight rupees, and of which registry was obtained in the zemindaree serishta, which lands were summarily decreed in favor of the defendant under Act IV. of 1840, on the 7th January 1848, or 25th Assar 1255 B. S.

The suit, including wasilat, was laid at rupees 64.

The defendant denies the claim, pleading that he holds the contested land, which is alluvion, in virtue of an umulnamah, dated 12th Bysakh 1253, from Lukeekant Doss, a farmer of julkur and chur lands.

On the roedad simply of the permanent ameen of the 8th January 1850, the lower court decrees the case, with costs for nine beegahs, nine cottahs and three quarters, with wasilat, amounting to fifteen rupees per annum, from the date of dispossession, or 12th Assar 1255 B. S.

It is urged, in appeal, that appellant got a summary decree from the magistrate for the disputed land; that the land is alluvion in the dry bed of the river Bamunia, and that the plaintiffs' witnesses are not independent and are of poor and low caste.

The lower court, having decided the case merely on the report of the ameen who has depended alone for the conclusion he has arrived at, in favor of the plaintiff's right, on the evidence of the witnesses of the parties to the suit, without having called for the plaintiff's



deed of sale of the 1st Maugh 1252 B. S., and taken proof in respect to it, and without having taken the testimony of the putwarry or the omlah of the zemindar as to the disputed land having formed a part of the jote originally of Gunga Pershad sold to Seif, the late husband of the plaintiff, Metun Beebee, and registered in the zemindarce sherishta, as alleged by plaintiffs, and without having taken proof as to the defendant's umulnamah of the 12th Bysakh 1253 B. S., and the authority of the farmer for granting it, I consider, for these reasons, the decision of the lower court to have been founded on imperfect enquiry. It is, therefore, ordered, that the appeal be decreed, and the order of the moonsiff reversed, to whom the case will be remanded for trial with reference to the observations above stated.

The value of the stamp of appeal will be returned to the appellant as usual.

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THE 14TH APRIL 1851.

No. 13 of 1849.

*Appeal from the decision of Mr. Thomas, late Acting Sudder Ameen of Rungpore, dated 12th June 1849.*

Khelaram Mistree, Joy Chand Doss, Bhyrubees Cusbee, Gool Behar Cusbee, (Defendants,) Appellants, with another,

*versus*

Bishonath Chatterjea, Brahmin, (Plaintiff,) Respondent.

THIS suit was instituted by respondent to recover compensation from the defendants for gross defamation of character consequent on his having been supposed to have inveigled and concealed in his house a young girl belonging to Bhyrubees Cusbee (defendant) a prostitute.

The sudder ameen, considering the plaint proved by the evidence of seven witnesses, decreed in favor of the plaintiff to the extent of two hundred rupees damages, besides costs.

From this decision an appeal was preferred, but the specific objections to the judgment appealed from not having been stated in the petition of appeal nor filed in a separate pleading, as required by Clause 5, Section 8, Regulation XXVI of 1814, I dismiss, with costs, the appeal under the provision of the enactment above stated, and affirm the decision of the lower court.

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THE 21<sup>ST</sup> APRIL 1851.

No. 110 of 1850.

*Appeal from the decision of the Moonsiff of Bhuwanegunge, dated 28th August 1850.*

Kuroonamoi Dossea and Birmomoi Dossea, (Defendants,) Appellants,  
*versus*

Ranee Surnomoi, Zemindar of Baharbund, (Plaintiff,) Respondent.

THIS suit was instituted by respondent for an increase of rent, under Regulation V. of 1812, amounting to rupees 193-1-1, on a rucba of 141 beegahs, 5 cottahs, from the year 1256 B. S.

The moonsiff decreed, with costs, for rupees 121-1-3-8, on a rucba of 97 beegahs, 12½ cottahs, from 1256 B. S.

On examining the proceedings, the moonsiff having omitted to record, before deciding the case on 28th August 1850, a preliminary proceeding, in conformity with Section 10, Regulation XXVI. of 1814, prescribed by Act XV. of 1850, and particularly enjoined by the Court's Circular of 8th May 1850, the case must be remanded for trial. It is, therefore, ordered, that the appeal be decreed, and the order of the moonsiff reversed, to whom the case will be returned for re-investigation for the reason above stated.

The value of the stamp of appeal will be refunded to the appellant.

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No. 118 of 1850.

Ranee Surnomoi, (Plaintiff,) Appellant,

*versus*

Kuroonamoi Dossea and Birmomoi Dossea, (Defendants,) Respondents.

THIS being only a counter appeal from the decision of the moonsiff of the 28th August 1850, above disposed of, the order passed on that case applies equally to this.

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## ZILLAH SARUN.

PRESENT: H. V. HATHORN, ESQ., JUDGE.

THE 9TH APRIL 1851.

No. 3 of 1848.

*A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 12th January 1848.*

Sheo Singh and Rampertab Singh, (Plaintiffs,) Appellants,

*versus*

Musst. Rajbunsee Koer and others, (Defendants,) Respondents.

THIS separate appeal has been preferred by plaintiffs, to recover interest during the period that the suit was pending in consequence of being refused by the lower court. I observe that plaintiffs, in their plaint, sued generally for "principal with interest," but did not specify up to what period, and interest was only awarded on the principal claimed to date of suit, and upon a separate petition filed by plaintiffs after the decree had passed, pointing out the omission, the principal sudder ameen, under the Circular Order, dated 11th September 1829, and 11th January 1839, amended his decree to the extent of awarding interest from date of decision to date of payment, but declined giving interest for the time when the suit was pending, upon the ground that the plaintiffs had not applied for it. I find, however, that a general application for interest was made, and it was therefore the duty of the court either to give it as is customary, or assign some sufficient reason for withholding it. Moreover, it appears to me that if plaintiffs were considered entitled to interest from the date of decision to the date of payment, they were equally entitled to it from the date of instituting their suit to the date of passing the final order, and I see no sufficient reason for withholding it, for that intermediate period.

ORDERED,

That the decision of the principal sudder ameen in this case be so far amended, that plaintiffs be also entitled to interest upon the principal sums awarded against each party from the date of instituting the suit to date of decision, and from that date to date of payment upon the total amount decreed, including interest and costs, and the costs of this appeal be also liquidated by the defendants in proportion to the sum decreed against them respectively.

THE 9TH APRIL 1851.

No. 4 of 1848.

*A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 12th January 1848.*

Musst. Rajbunsee Koer, (since deceased), Moorlee Singh, Soobron Singh, Ramlochun Singh, Sheochurn Das, Hurruknaraian Singh, Ramungra Singh, and Nursing Sahaye, (Defendants,) Appellants,

*versus*

Sheo Singh and Rampertab Singh, (Plaintiffs,) Respondents.

CLAIM, to recover Company's rupees 1454-8-9, being the principal and interest of Government revenue for the villages Raiputtee and Babungown-Kidarpooora, pergunnah Kusmer, from 1250 to 1252 Fusly, liquidated by plaintiffs on behalf of defendants.

This suit was instituted on the 30th December 1845. It appeared from the plaint that the *mehal* Raiputtee and Akberpoor-Judees, consisted of eight villages. Of these the village of *Raiputtee* was sold conditionally by Bunwaree Singh, the late proprietor to the defendant, Musst. Rajbunsee Koer, and *Babungown-Kidarpooora*, which had been in possession of Hingoolaj Singh, and his co-sharers, was sold by them in 1250 Fusly to Surrubnaraian Singh, and of the remaining six villages, five and a half were mortgaged by Bunwaree Singh to Gobind Singh and others, who afterwards became the absolute proprietors under a decree of court, and these decree-holders (Gobind Singh and four others) sold their rights and interests to the plaintiffs in this suit early in 1250 Fusly, the remaining half village (Akulpoor-juspal) is apparently in possession of Ghulam Kadir by purchase.

Plaintiffs state that after their purchase of the five and half villages in 1250 Fusly, the defendants withheld their Government revenue, which compelled them, the plaintiffs, to pay, as the estate being undivided was jointly responsible. This suit is accordingly brought to recover the share of Government revenue so paid in by plaintiffs on behalf of defendants in order to save the estate from sale.

Amongst the several defendants, Musst. Rajbunsee Koer, (the proprietor of Raiputtee) and Surrubnairaien (the purchaser of Babungown), and Muhtab Rai and Rambehadoor Rai, the partners of Hingoolaj Singh, (the late proprietor of Babungown) defend this suit. The remaining defendants (the heirs and partners of the late Hingoolaj did not file any answers; but seven of them (Moorlee Singh, &c.,) nevertheless appeal in dissatisfaction of the principal sudder ameen's decision.

Rajbunsee urges that she has paid the revenue of Raiputtee, but which has been withheld by plaintiffs, through whom it was dispatched, and she adds that plaintiffs have omitted to notice that she

is a proprietor of one-third of Babungown also purchased by her late husband from Hingoolaj and others.

Surrubnarain Singh says that he purchased the entire village of Babungown from Hingoolaj and others, and denies having sold one-third to Rajbunsee's late husband, asserting that he has paid his share of the revenue.

Muhtab Rai and Rambehadoor, co-sharers of Hingoolaj, deny having sold their shares (3 annas, 4 dams,) to Surrubnarain, as set forth, and plead payment of their quota of the revenue through Hingoolaj.

The principal sudder ameen, after drawing the issues under Section 10, Regulation XXVI. of 1814, called upon the parties for their proofs in support of their respective allegations, and found, after attesting plaintiffs' proprietary right by purchase, that their statement of having paid the revenue for 1250 to 1251 and 1252 Fusly, for these two villages was substantiated, both by the awajeh, or daily account of receipts at the collectorate for those years, and by the evidence of the witnesses adduced; the two defendants, Surrubnarain and Muhtab, &c., failed to adduce any proofs in support of their allegations, and Rajbunsee offered no detail of her alleged payments, and filed no rejoinder to plaintiffs' replication. The remaining defendants (as before noticed) did not defend the suit. Under these circumstances the principal sudder ameen has decreed, with interest to date of suit, the balance of revenue of Raiputtee, against Musst. Rajbunsee and Bunwaree Singh, as follows:

	<i>Balance of Principal.</i>			<i>Interest.</i>			<i>Total.</i>		
	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
For 1250 Fussily,	418	6	2 $\frac{3}{4}$	134	6	0	552	12	2 $\frac{3}{4}$
„ 1251 „	317	6	2	62	1	3	379	7	5
„ 1252 „	163	11	2 $\frac{3}{4}$	13	10	3	177	5	5 $\frac{3}{4}$

Company's rupees,..... 1109 9 1 $\frac{1}{2}$

and in like manner the revenue of Babungown, for 1250 Fusly, against Moorlee and others, the heirs and partners of Hingolaj, and for 1251 and 1252 Fusly, against Surrubnarain, the new purchaser; thus—

	<i>Balance of Principal.</i>			<i>Interest.</i>			<i>Total.</i>		
	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
For 1250 Fussily,	178	8	0	59	14	0	238	6	0
„ 1251 „	0	10	0	0	1	6 $\frac{1}{4}$	0	11	6 $\frac{1}{4}$
„ 1252 „	100	2	0	5	7	4 $\frac{1}{2}$	105	9	4 $\frac{1}{2}$

#### JUDGMENT.

I find no sufficient reason to interfere with this decision excepting that plaintiffs appear entitled to interest during the period the

suit was pending, which, I observe, has not been awarded. A separate appeal has been instituted by plaintiffs for that purpose. The objections urged by Musst. Rajbunsee are insufficient, because she has failed to prove that she has paid her quota directly or indirectly, and therefore plaintiffs (who have paid for her) are entitled to recover. The remaining appellants did not defend the suit in the lower court, and have assigned no reasons in appeal for the default. Their objections therefore raised for the first time in the appellate court cannot be entertained (*vide* Sudder Dewanny Adawlut, 6th June 1840,) especially as in this case the decree of the lower court appears just and equitable. It is observed that the defendants, Surrubnarain Singh, Muhtab and Rambehadoor, being satisfied with the decision of the lower court, prefer no appeal.

ORDERED,

That this appeal be dismissed, with costs, and the decision of the lower court (with the additional interest awarded in the separate appeal No. 3 of 1848,) be affirmed.

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THE 9TH APRIL 1851.

No. 7 of 1848.

*A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 9th March 1848.*

Sheodeal Rai and Jaigopal Rai, (Defendants,) Appellants,

*versus*

Gunesh Saho, (Plaintiff,) Respondent.

CLAIM, for possession and resumption of 2 beegahs, 17 cottahs, and  $4\frac{1}{2}$  doors of land, situated in the village of Naraon, pergunnah Baal, with mesne profits for 1252 and 1253 Fusly; total valuation Company's rupees 243, 15 annas.

This suit was instituted by plaintiff on the 25th August 1846, a previous suit simply to reverse the magistrate's orders, under Act IV. of 1840, upholding the possession of defendants had been nonsuited for informality. The plaintiff styles himself the purchaser of the shares of Beiroodut and Bhugwan Singh who, with others are in possession of a 3 anna,  $2\frac{1}{2}$  p. share in the village, or two-fifths of a moiety of the entire village, and brings this action against defendants the peshgidars of Bishendut, &c. alleged rent-free holders of 11 beegahs, 8 cottahs and 17 doors of land, for possession and resumption of the share purchased by him.

The defendants state that the rent-free tenure was acquired by Agund Singh (the ancestor of Bishendut, Mohadeo and Doorgadut) from whom he holds possession upon a lease on advance of money, and that the grantee and his heirs have been in possession for sixty-eight years, and the suit to eject is not cognizable. The heirs

of the rent-free holder do not defend the suit, and the collector reports under Section 30, Regulation II. of 1819, no such land is registered in his books as acquired by Agund Singh, and no sunnud is produced.

The principal sudder ameen accordingly decrees, with costs in favor of plaintiff for possession and resumption, with mesne profits to date of obtaining possession. The peshgidars appeal in dissatisfaction, maintaining the right of the rent-free holder from whom they had on lease an advance, and quoting the Construction No. 576, which is opposed to the orders of the principal sudder ameen, decreeing mesne profits.

### JUDGMENT.

The order of the principal sudder ameen in this case is defective, his decree for possession, with mesne profits from 1252 to date of obtaining possession is tantamount to an order of ejectment. But in such cases, as explained in the Construction referred to (No. 576), the only question to be determined by the court is the validity or otherwise of the alleged rent-free tenure, and not the amount assessable thereon. The extent of share purchased by plaintiff is not at issue. Neither the sellers nor other maliks are parties to this suit, and thus the amount share, stated to have been purchased, is not disputed; it may be correct, as more or less; the invalidity of the rent-free tenure (not having been registered) is clear. The court should have proceeded no further than to declare the land liable to assessment, leaving the amount to be fixed hereafter if disputed.

### ORDERED,

That the decision of the lower court be amended, that the plaintiff's claim for resumption be decreed, and the claim for actual possession, with mesne profits, be dismissed, with costs in proportion.

THE 9TH APRIL 1851.

No. 9 of 1848.

*A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 9th March 1848.*

Sheodial and Jaigopal, (Defendants,) Appellants,

*versus*

Mohadeo and Hurdean Singh, (Plaintiffs,) Respondents.

CLAIM, for possession and resumption of 19 cottahs, 1 door and 10 doorkee, in Naraon, pergunnah Baal, with mesne profits from 1248 to 1253 Fusly; total valuation Company's rupees 103, 14 annas.

The particulars of this claim, and the principal sudder ameen's decision thereon accord with the appeal case No. 7 of 1848, a corresponding order in appeal must follow.



## ORDERED,

That the decree for resumption only be affirmed, and the claim for actual possession, with mesne profit's be dismissed, with costs in proportion.

THE 19TH APRIL 1851.

No. 10 of 1848.

*A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 16th March 1848.*

Achaiber Rai, Rungoo Rai, and five others, (Plaintiffs,) Appellants,

*versus*

Hurrak Rai, Hiabal Rai, and twenty others, (Defendants,) and Tirbooran Rai, Ramsurn Rai, and nine others, (Defendants, by precaution,) Respondents.

CLAIM, for possession of 153 bs. 10 cs. 8 d., of land in Peranta Goorhoo, pergunnah Goah, with mesne profits from 1245 Fusly, total Company's rupees 2939, 3 annas, 1½ pie.

Plaintiffs set forth in their plaint, dated 22nd February 1847, that the village of Peranta is divided into three portions, denominated respectively Nursing or Peranta Khas (to the east) Peranta Negha, (to the west) and Peranta Goorhoo (in the centre); the names being derived from former ancestors in possession; plaintiffs and the third parties in this case (except Behari and Beni) being the descendants of Negha Rai. They proceed to state that the heirs of Nursing and Goorhoo sold their rights to Keshoo, an ancestor of defendants, whose heir, by name Sumboo Dutt, sold Peranta Goorhoo to Modan Rai, the ancestor of plaintiffs. This transfer by sale is alleged to have taken place in 1151 Hijeree (1146 Fusly.) The sale, it is stated, was disputed, but decreed by the cazee in plaintiffs' favor (not filed) in 1197 Fusly; they admit that a settlement of the Megha portion (415 beegahs) was made with plaintiffs, and Peranta Khas (854 beegahs) with defendants, who, it is alleged, wrongfully took possession also of Peranta Goorhoo. The parties, being at issue, the collector attached the disputed land (Goorhoo) in April 1830, with a view to settlement as "tauzleer," but which the commissioner of revenue ordered to be released on the 22nd April 1833, as being incorporated, and belonging to Peranta Khas, a Nizamut village, which had been previously settled. In 1836, summary orders were passed under Regulation VI. of 1813, by the court, in regard to the rights of certain cultivators in this village, but the proprietary right was left an open question. In 1245 Fusly, it is asserted, that defendants forcibly ejected plaintiffs from a portion of their

share amounting to beegahs 153, cottahs 10, doors 8, leaving beegahs 52, cottahs 16, doors 2, in their possession, thus the plaintiffs' claim altogether beegahs 206, cottahs 6, doors 16. This suit is instituted for possession of the above beegahs 153, cottahs 10, doors 8, with mesne profits from the alleged time of ejectment.

Defendants state that their disputes with plaintiffs were adjusted (under Regulation VI. of 1813,) twenty-four years ago; and cannot now be revived; that no transfer by sale, as alleged, was ever made to Modan (ancestor of plaintiffs,) and that Peranta Khas and Peranta Goorhoo are the same, that they and their ancestors have been in undisturbed possession (as will appear from the collector's books) since a time previous to the Company's accession to the Dewanny, and no original bill of sale is produced by plaintiffs in support of his purchase. In reply, plaintiffs urge that the suit is not barred by lapse of time, which they calculate from 1245 Fusly, the suit being instituted in 1254 Fusly, (1847 A. D.)

The principal sudder ameen's decree is in substance as follows: that the land in dispute was originally attached as tawfeer preliminary to settlement, but subsequently released as appertaining to the village Peranta Khas, previously settled; that the settlement originally made with defendants stood confirmed by the revenue authorities, and the admission of this claim would be tantamount to declare land already settled as rent-paying, to be rent-free.

#### JUDGMENT. . .

I find no reasons for interfering with the principal sudder ameen's decision in this case. Plaintiffs ground this claim upon a purchase stated to have been made in 1146 Fusly, by their ancestor Modan, from Sumboodut, the ancestor of defendants; this bill of sale is not produced. The village appears to have been released by the revenue authorities in favor of defendants as the parties in possession, although plaintiffs may have long cultivated lands in the village, they have nothing to show in support of their claim to proprietary right. The plea of retaining beegahs 52, cottahs 16, doors 8, and having been forcibly dispossessed of beegahs 153, cottahs 10, doors 8, in the year 1245 Fusly, is not proved, and is apparently set up merely to bring the suit within the law of limitation, and to give a color to their claim. The decrees of courts cited, dated in 1805, 1812, and 1847, do not in any way support plaintiff's proprietary right or title to the specific lands now claimed in Peranta Goorhoo.

#### ORDERED,

That this appeal be dismissed, with costs, and the decision of the lower court be affirmed.

THE 19TH APRIL 1851.

No. 11 of 1851.

*A Regular Appeal from a decision passed by Moulvee Mahomed Haneef, Sudder Ameen of Sarun, dated 23rd December 1850.*

Jogee Rai, Bhagee Rai, Achaiber Rai, and Rungoo Rai,  
(Defendants,) Appellants,

*versus*

Oodit Rai and others, heirs of Hurruk Rai and Acharaj Rai,  
Jodee Rai and others, (Plaintiffs,) Respondents.

CLAIM, Company's rupees 311, on account of rent for 1254 to 1255 Fusly, with interest, for the cultivation of beegahs 59, c. 6, d. 16.

This suit, which was instituted on 9th April 1849, is a continuation of the claim referred to in the appeal case No. 26 of 1848 preceding, and which claim, upon the attestation of the putwarry's account and proof of possession, has been amended by the sudder ameen before whom this case was tried, upon the grounds of the former decision.

The circumstances of this case correspond, and for similar reasons I confirm the decision, viz., with the addition of interest, as the defendants should have paid their rent in accordance with the former decree, as soon as it was passed, and not waited for the contingency of its reversal in appeal.

THE 19TH APRIL 1851.

No. 16 of 1848.

*A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 16th March 1848.*

Beharee Rai and Benee Rai, (Plaintiffs,) Appellants,

*versus*

Hurruk Rai and thirty-four others, (Defendants,) Respondents.

CLAIM, for possession of 35 beegahs of land in Peranta Goorhoo, Pergunnah Goah, with mesne profits from 1246 to 1254 Fusly; total valuation Company's rupees 969, 15 annas, 9 pie.

Plaintiffs set forth that out of 100 beegahs of ancestral property in this village their ancestor Romon Rai, in 1154 Fusly, sold 50 beegahs to Anund Rai, the ancestor of defendants, leaving 50 beegahs in their possession, and that in 1244 Fusly, in consequence of their imprisonment for breach of the peace, defendants took forcible possession of 35 beegahs out of the said 50 beegahs, leaving 15 beegahs still in their possession.

Defendants deny that plaintiffs possess any proprietary right whatever in the village, observing that in their former suit (dis-

missed on 16th February 1847,) they declared the land to be situated in Peranta *Megha*, and now say it is in Peranta *Goorhoo*, and that they have no documents to produce in support of their alleged proprietary right in the land so claimed, and that the 15 beegahs is not held by them as proprietors, but as cultivators.

The plaintiffs ground their claim apparently upon the former decree, dated 12th August 1805, in which to recover possession of 50 beegahs, alleged to have been temporarily assigned to Ramtowa-kul for an advance of 18 rupees, their ancestors alluded to having other 50 beegahs in their possession. The claim was, however, dismissed, as the sale of the 50 beegahs was found to have been absolute, and at the time no enquiry was made in regard to the remaining 50 beegahs (asserted to be in their possession) as it was not at issue. The decree, alluding to a bare assertion made by plaintiff's ancestors, unsupported by any proof, and the subsequent decision of the 16th February 1847, in which plaintiffs claimed this land as situated in Peranta *Megha*, is all the proof offered in support of this claim, and which is clearly insufficient. The principal sudder ameen has accordingly dismissed this suit, with costs, and which decision, being considered correct, is hereby affirmed, with costs.

THE 19TH APRIL 1851.

No. 26 of 1848. ,

*A Regular Appeal from a decision passed by Nôcoorchunder Chowdhry, late Principal Sudder Ameen of Sarun, dated 24th August 1848.*

Jogee Rai, Bhogee Rai, Achiber Rai, Rungoo Rai, and fifteen others,  
(Defendants,) Appellants,

*versus*

Hurruk Rai, Acharaj Rai, Goodree, and six others, (Plaintiffs,) Respondents.

CLAIM, Company's rupees 2206, 2 annas, 8 pie, on account of principal and interest of rent for the village Peranta Goorhoo, pergunnah Goah, from 1244 to Chyte 1254 Fusly.

This suit was instituted by plaintiffs on the 12th March 1847. Shortly after the adverse party had instituted a counter-suit to establish their proprietary right to 153 bs. 10 cs. 8 d., from which it was alleged they had been dispossessed, admitting having 52 bs. 16 cs. 8 d. in their possession; that suit has been dismissed. Achaiber Rai and others having failed to establish their proprietary right, plaintiffs in this suit now sue for rent as detailed in the margin, since 1244 Fusly, a period of eleven years, admitting a payment (by way of strengthening their claim) of rupees 90, 12 annas.

Principal,...	1522	13	3
Paid,.....	94	12	0
Balance,...	1432	1	3
Interest,...	774	1	5
Total,...	2206	2	8

Defendants defended the suit when the claim of proprietorship was pending, pleading their right of property.

The evidence of the village putwarry, and three others, witnesses with the putwarry's account, is submitted in proof of plaintiff's claim for rent. The rate of assessment is at 2 rupees, 7 annas per beegah, or Company's rupees 145-0-0, 6 per annum, and the putwarry and witnesses testify to the possession and cultivation of the land, viz., 59 beegahs, 6 cs. 16 d. during the period under review, which to the extent of 52 beegahs, 16 cottahs, 8 doors, is in a measure admitted by defendants in the counter-claim No. 10 of 1848.

The principal sudder ameen has passed a decree in favor of plaintiffs for the rent claimed, viz. Company's rupees 1432, 1 annas, 3 pie, with interest, amounting to Company's rupees 774, 1 annas, 5 pie, and cost.

The defendants appeal upon the general grounds previously taken, and also point out an error in the copy of the decree in which the vakeel's fees are stated at 210 rupees, 5 annas, each side, instead of 110 rupees, 5 annas, or 10 per cent., instead of 5 per cent. I observe the original in both places has an erasure, which leads to the belief that the copy attested by two of the principal sudder ameen's officers, Kalichurn, acting peshkar, and Sheosurnlal, acting decree novees, may be correct, and that the original may have been subsequently altered, in either case it requires correction, after enquiry on the part of the principal sudder ameen as to the cause of discrepancy between the original and copy. In other respects the claim to rent appears just; but with reference to the circumstances of the case (each party having claimed the proprietary right,) I think that interest should be remitted, prior to the determination of right. I therefore uphold the award of rent, with all costs of suit, interest to be charged from the date of the principal sudder ameen's decision to date of payment.

ORDERED,

That the decision of the principal sudder ameen be awarded as above directed.

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THE 19TH APRIL 1851.

No. 28 of 1848.

*A Regular Appeal from a decision passed by Nocoorchunder Chowdhry, late Principal Sudder Ameen of Sarun, dated 24th August 1848.*

Bence Rai, Beharee Rai and Baron Rai, (Defendants,) Appellants,  
*versus*

Hurruk Rai, Acharaj Rai, Goodree, and others, (Plaintiffs,) Respondents.

CLAIM, Company's rupees 519, 4 annas, 4 pie, on account of balance of rent in Peranta Goorhoo, pergunnah Goah, for the years 1244 to middle of 1254 Fusly.

This suit was instituted on the 23rd March 1847. The particulars of which refer to the appeal case, No. 16, in which defendants having failed to substantiate their proprietary right the plaintiffs (with whom the settlement was made) now demand rent from 1244 to 1254 Fusly, as proprietors, and which has been awarded by the principal sudder ameen after attesting the putwarry's account, and taking evidence as to the fact of possession.

I find no sufficient reason to interfere except in regard to the award of interest. Defendants clearly admit having cultivated 15 beegahs, being one beegah more than for which rent is claimed; but under the circumstances of the case both parties having long claimed their proprietary right in the lands, I think that plaintiffs, to whom it has been awarded, should be satisfied with back rents without interest, inasmuch as defendants have for years past held under a *bond fide* assumption of proprietary right.

ORDERED,

That the award of principal, with costs of suit, be affirmed, but with interest from the date of the principal sudder ameen's decision only to date of payment, and the decision in regard to interest be thus amended.

THE 21ST APRIL 1851.

No. 2 of 1850.

*A Regular Appeal from a decision passed by Moulvee Mahomed Waheed-dooden, late Moonsiff of Chupra, dated 10th December 1849.*

Thakoor Pandey, (Plaintiff,) Appellant,  
*versus*

Ruktoo Pandey and Gunesh Pandey, (Defendants,) Respondents.

CLAIM, Company's rupees 17, 6 annas, 3 pie, principal, and Company's rupees 8-15-9, (total Company's rupees 26, 6 annas,) on a bond, dated 25th Chyte 1251 Fusly, or 29th March 1844.

The parties in this suit had long contested the right to the ujman fees, appertaining to the share of Musst. Ajnasee Koer,

deceased, and which suit (*vide* case preceding) has been recently sent back for re-trial.

This claim originates in an order passed by the principal sudder ameen on the 27th February 1844, in the above mentioned case, when that court nonsuited the first claim of Ruktoo and others, plaintiffs in that suit, for informality; and awarded the defendants' costs due to Thakoor Pandey, (*viz.*, Company's rupees 17-6-3) against Ruktoo and others.

It is set forth by plaintiff in this case that defendants in liquidation of the said costs executed this bond on the 29th March 1844, a month after the order was passed, and which not having been paid, this suit is instituted to recover the same, with interest.

Both defendants deny executing the bond, observing that as the disputed claim was nonsuited by the principal sudder ameen's court, any adjustment between the parties on account of fees was improbable, nor did they (as alleged by plaintiff) file any petition in court admitting having executed a bond of the said fees. Gunesh further states that the fees were separately paid and a receipt (on plain paper) granted.

The moonsiff has dismissed this claim, considering the bond to be a forgery, and the reasons assigned are, *first*, that Ruktoo's alleged petition dated 3rd April 1844, admitting the adjustment by bond, was not to be relied on; *secondly*, that the stamp was bought ten days previous to the date of the bond by Ruktoo, the debtor; and *thirdly*, that had a bond been executed, a petition to realize the costs in the appellate court would not have been subsequently filed by plaintiff; and lastly, that the petition of adjustment alluded to a meadee, document, which this is not (the moonsiff says) being a bond.

These various reasons for discrediting the bond and rejecting plaintiff's claim appear very insufficient. In regard to the first and third reasons, I consider it to be quite as possible that after the execution of the said bond plaintiff (who had been long at enmity with the other party might, from motives of enmity, petition to realize these costs, as to suppose that the bond could not have been previously given, because, such subsequent application was afterwards made; as to the second objection taken, it is no reason at all, who, but the debtor was to purchase the stamp; and why is the bond rejected as a forgery, because the paper happened to be purchased ten days previously? The fourth and last reason is manifestly an error. The petition of adjustment alluded to a "meadee dustaveez;" this bond, I find, was made payable, with interest in one month, is this not "meadee," or within a certain period? But the moonsiff's decision is still more remarkable: he founds his decree upon probabilities without making any allusion whatever to the direct evidence adduced. Two or three witnesses to the bond, including the scribe,

(a putwarry) swear to its execution by defendants in their presence, the scribe (Himutlal) putwarry signing for both. I see no sufficient reasons for rejecting this direct testimony as untrustworthy. Moreover, the defendants pleaded payment of the costs by a separate receipt, and cited three witnesses to prove it, but who were not produced or pointed out by defendants. For the above reasons I consider that plaintiff is entitled to a decree.

ORDERED,

That the moonsiff's decision be annulled, and a decree be passed in favor of plaintiff against both defendants for the full amount claimed, with interest on the principal from date of institution to this date, and henceforth on the full amount decreed, including costs of suit until liquidated.

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## ZILLAH SHAHABAD.

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PRESENT : W. TAYLER, ESQ., OFFICIATING JUDGE.

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THE 5TH APRIL 1851.

No. 11 of 1850.

*Appeal from the decision of Moulvee Golam Ashgur, Principal Sudder Ameen, dated 12th August 1850.*

Nipal Singh, Ramheet Singh, Loll Jewun Singh, and Soonsar Singh, (Plaintiffs,) Appellants,

*versus*

Ram Ablak Singh, Aheeburn Singh, Nishan Singh, Futtehnarain Singh, Pureeag Singh, and Rajeenath Singh, former proprietors, Rambhunjun Sahoo, Bisheshur Singh, Ablak Singh, and Musst. Purbutee, auction purchasers, Balik Sahoo and Muhabeer Sahoo, decreeholders, (Defendants,) Respondents.

THIS was an action brought by the plaintiffs (appellants) to set aside and declare void an auction sale of certain villages, sold by order of court in execution of decree; suit laid at rupees 1735-0-0.

The allegation of the plaintiffs is that they purchased from the proprietors, Ablak Singh and others, the villages Chinaree, Suhsee, Binsill, Chunwuk, Mujahidpore, and Etrolia, and that in consideration of the payment of rupees 7975, the proprietors executed in their favor a deed of sale, bearing date the 15th of April 1846, the purchase money being paid, and a receipt taken by them on the 18th idem; that three of these villages, viz., Chinaree, Binsill, and Suhsee had been previously mortgaged by the proprietors under a deed of bye-bil-wuffa to one Sheo Suhsee Lall, who had held possession under the deed; but the entire amount of the loan for which they had been mortgaged having been realized from the usufruct of the estate, the mortgagee had relinquished the villages in their favor, and that they, under their right of purchase, had sued the late mortgagee for recovery of the *surplus*, which, during his temporary occupancy, he had derived from the estate; that the right, title and interest of several of the defendants in four of these villages, viz., Chinaree, Binsill, Suhsee and Chunwuk were sold on the 5th January 1847, in execution of a decree obtained against Ablak Singh and others by one Balik Sahoo, that they objected to the sale; but their petition not having been within the

prescribed period, or even before the auction sale had taken place, was rejected by the principal sudder ameen, and the order of rejection was upheld on appeal by the zillah judge.

Other allegations are added relative to certain defects and informalities in the procedure connected with the sale, which it is unnecessary here to recapitulate.

They now sue for the reversal and annulment of the auction sale.

Ablak Singh and his co-parcener made no answer to the plaint.

Balik Sahoo and Mukabeer Sahoo, the holders of the decree against Ablak Singh and others, filed a joint defence with Rambhujun Sahoo, the auction purchaser of mouza Chunwuk, affirming that the alleged purchase by the plaintiff in 1846 is a fictitious and fraudulent transaction, got up in collusion with former proprietors, with a view to evade the execution of Balik Sahoo's decree. The other auction purchasers of mouza Chinaree, Suhsee and Binsill follow in the same line of defence; and all adduce very forcible argument to prove the fictitious character of the alleged conveyance, the most important of these being detailed in the decree of the principal sudder ameen, it is not necessary to set them forth at length in this place.

The principal sudder ameen declares the purchase and sale, under which the plaintiff sues to be a fraudulent and fictitious transaction, on the following grounds: that the transfer did not take place until after the list of property had been filed by Balik Sahoo, and a proceeding had been sent to the revenue commissioner, soliciting his sanction to the sale of these mouzas; that the villages, Chinaree, Suhsee and Binsill, had been previously pledged as security for the stamp darogah at Ghazeepore, and their alienation prohibited by proclamation from the collector's office; that subsequent to the alleged sale, Ablak Singh and his co-parceners, had, before the moonsiff of Sasseram, defended a suit brought by one Oolfut Roy, relative to the boundaries of mouza Chunwuk, and had therein declared and described themselves as the proprietors of the said mouza; and that no opposition or objection was urged by the plaintiff; and lastly, that the buyers and sellers are related to each other.

On these and sundry others less important points of suspicion, the principal sudder ameen, holding the sale to be nominal and fictitious, dismissed the plaintiff's claim, with costs.

The petition of appeal contains nothing which, in my opinion, is calculated to affect the force and relevancy of the arguments, on which the judgment of the lower court is based. The law must ever view with jealousy and suspicion the alienation of property seized, or pointed out, in execution of a decree of court, and when from the relationship of the parties, or any other circumstances there is a *prima facie* appearance of collusion or fraud, the clearest

and most unimpeachable evidence is necessary to establish the reality of a transaction by which the rights of a decreeholder are voided.

In this case, there is an array of facts, exhibited and proved upon the record, all tending to establish the fictitious character of the alleged transaction between the buyer and seller, and I see no ground whatever for doubting the accuracy and soundness of the decision. The decree of the lower court is accordingly affirmed, and the appeal dismissed, with costs.

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THE 8TH APRIL 1851.

No. 14 of 1850.

*Appeal from the decision of the Principal Sudder Ameen, Golam Asghur, dated 16th August 1850.*

Kassim Ally, (Plaintiff,) Appellant,

*versus*

Ameer-ood-deen, (Defendant,) Respondent.

THIS was an action on the part of the plaintiff to have cancelled and declared void a deed of bye-bil-wuffa, fraudulently and fictitiously executed by one of the defendants in favor of another to the prejudice of the plaintiff's rights; suit laid at rupees 1010.

The plaint sets forth that under a deed of sale, bearing date 22nd June 1842, the defendant Heyat Beebee, conveyed to the plaintiff for the sum of 350 rupees, then and there paid by him, the proprietary right in a certain house with premises adjoining in the town of Arrah; that the plaintiff, in right of the above purchase, took possession of the premises, allowing Heyat Beebee and her husband Himmud Ally, (who are his relations and much advanced in years) to occupy the house as his tenants; that since that period he has retained undisturbed possession of the whole tenement, and has expended considerable sums in their maintenance, repair, and improvement; that lately one Kassim Ally, who is related both to the plaintiff and to Heyat Beebee, has exhibited a fictitious document, purporting to be a deed of bye-bil-wuffa of the premises purchased by the plaintiff, executed by Heyat Beebee in his (Kassim Ally's) favor, and bearing date 15th December 1840-1, nearly two years prior to the deed of sale held by the plaintiff, and that with a view to obtain an order of court declaring the sale absolute; on default of payment he has filed a petition in the judge's court under Section 8, Regulation XVII. of 1806.

The plaintiff, therefore, has no other resource than to bring the question of his title to issue at law, and accordingly sues for the annulment of the document, and to this end brings all the parties before the court.

The defendant Kassim Ally alleges that Heyat Beebee borrowed from him rupees 200, which was paid to one Kadim Ally in satisfaction of a decree of court which he held against her, and that being unable to re-pay the amount, she executed in his favor the deed of bye-bil-wuffa now brought in question, wherein she conveyed to him the conditional title to the disputed house; that the sum thus borrowed has never been re-paid, and that he is accordingly entitled to have the sale declared absolute. In all other points he corroborates the allegations of Heyat Beebee, which will be noticed below.

Heyat Beebee acknowledges the plaintiff's purchase, alleging that in the absence of Kassim Ally she was induced by the persuasion of Ameer-ood-deen, the plaintiff, to effect the conveyance in his favor; but she denies the full payment of the amount of purchase money, of which she says rupees 54 are still due.\*

She further adds that although the terms of the deed of sale held by the plaintiff are unconditional, yet a verbal stipulation was entered into at the time of its execution, to the effect that she and her husband should be allowed to retain *occupation* of their premises during their lives free of rent, under which stipulation they still occupy it.

Himmat Ally says that he has no concern in the matter; that the plaintiff had no right to bring him before the court at all, and then proceeds to confirm in all other particulars the statements of the other defendants.

The principal sudder ameen declares the deed of bye-bil-wuffa a fictitious document, executed by the defendants in collusion one with the other to void the right and title of the plaintiff.

The principal grounds of his judgment are: that the actual and *bonâ fide* purchase by the plaintiff of the disputed premises is fully and satisfactorily established by the documentary and parol evidence on the record, as are also the payment of the purchase money, and the possession, maintenance and repair of the premises by the plaintiff. That the right and title of the plaintiff has been admitted by the defendants themselves, in documents exhibited by the plaintiff in the case, whereas the deed of bye-bil-wuffa, which is neither sealed with the cazee's seal nor registered, is supported neither by direct nor circumstantial evidence. That Kassim Ally, though his deposition was taken by the sudder ameen in a case, wherein this identical house was the subject of dispute, never mentioned the lien, which he held upon it in virtue of this deed, and further although the aforesaid deed professes to have been executed and delivered to Kassim Ally, in consideration

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\* She admits having sold the same house under a deed of bye-bil-wuffa to Kassim Ally, before the conveyance to the plaintiff, but affirms that the money, which she had borrowed from Kassim Ally had been repaid, though he still retained the document.

of a loan of 200 rupees, borrowed by Heyat Beebee, for the purpose of satisfying Kadiin Ally's decree; yet on reference to the copy of the sudder ameen's roobukaree, dated 10th July 1838, and filed by the plaintiff, it appears that the execution of that decree was completed two and half years before this transaction and the proceedings closed.

These facts with others of less importance, but of a similar tendency, have led the principal sudder ameen to the conviction that the transaction between Heyat Beebee and Kassim Ally was fictitious and fraudulent.

He accordingly passed a decree in favor of the plaintiff, cancelling the deed of bye-bil-wuffa.

The defendants, though sued jointly by the plaintiff, filed separate answer in the court below, and preserved the same course in appeal.

The appellant in this case, Kasim Ally, has adduced no argument whatever in his petition of appeal to justify any interference with the judgment of the lower court, which is accordingly affirmed, and the appeal dismissed, with costs.

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THE 8TH APRIL 1851.

No. 13 of 1850.

*Appeal from the decision of the Principal Sudder Ameen, Golam Asghur, dated 16th August 1850.*

Musst. Heyat Beebee, (Plaintiff,) Appellant,

*versus*

Ameer-ood-deen, (Defendant,) Respondent.

THE full particulars of this case are detailed at length in my decision in the case No. 14.

With the grounds set forth in the decision of the principal sudder ameen I fully concur, the appeal is accordingly dismissed, with costs.

THE 14TH APRIL 1851.

No. 1 of 1851.

*Appeal from the decision of the Principal Sudder Ameen, Golam Asghur, dated 14th December 1850.*

Sham Lall, (Plaintiff,) Appellant,

*versus*

Syud Ghalib Ali and others, (Defendants,) Respondents.

SUIT for possession of 240 beegahs of land in talooka Busuntapore, pergunnah Arrah, with mesne profits; suit laid at rupees 2918-14-6.

This was an action on the part of the plaintiff to recover possession of 240 beegahs of land in the above talooka, in virtue of a mokururee pottah, granted to him by one of the proprietors, Kunaya Lall, of which he had been dispossessed by the defendants under circumstances detailed in the plaint.

The suit was dismissed by the principal sudder ameen on the 14th December 1850.

It is not necessary here to enter into any further specification of the facts of the case or of grounds on which the judgment of the lower court is based, as I find it necessary to remand the case for re-trial, in consequence of a very serious defect by which it is vitiated.

The former principal sudder ameen, Cazee Munour Alli, in his preliminary proceeding, dated 15th March 1849, laid down one point of enquiry only, as the issue of the case, viz., the validity of the mokururee title under which the plaintiff sues.

The present principal sudder ameen has, in his decree, declared no less than five additional points of enquiry, as necessary to the adjudication of the suit.

Having failed, however, to record these points in a separate proceeding, as positively required by the law, and specially enjoined by the late Circulars of the Sudder Court, his decree is manifestly defective, and cannot be upheld.

I accordingly remand the case for trial *de novo*.

The usual order will be issued for the refund of the stamp duty to the appellant.

THE 14TH APRIL 1851.

No. 2 of 1851.

*Appeal from the decision of the Principal Sudder Ameen, Golam Asghur, dated 17th December 1850.*

Maharaja Mahessur Buksh, (Defendant,) Appellant,

*versus*

Lulloo Bindheseree Dutt and others, (Plaintiffs,) Respondents.

THIS was an action brought by the plaintiff, for the recovery of arrears of rent due from the defendants, and for cancelment and resumption of a mokururee tenure held by them; suit laid at rupees 1146-5-9.

The plaintiff claimed from the defendants a sum of rupees 459-10-6, being arrears of rent due from them for eleven years, viz., from 1245 to the month of Aughun 1256 B. S., inclusive, at rupees 32 per annum, on account of a mokururee estate held by them, in right of purchase from the original grantees. They also sued to recover and enter upon the estate in consequence of the default of the defendants.

The relative position of the parties in this case is not disputed. The right of the plaintiff to demand, and the obligation of the defendants to pay the rent of these lands, is admitted by each, nor is the fact of non-payment under question.

The only points at issue are, first, whether the rent is to be paid at the enhanced rate demanded by the plaintiff, or at that specified in the defendant's pottah; secondly, whether the non-payment is the fault of the defendant or the plaintiff; and thirdly, whether any such laches is attributable to the defendants as to subject them to the annulment and resumption of their tenure.

The plaintiffs claim to enhanced rent is founded on the fact, that subsequent to the original grant of the mokururee lease, the mehal has come under butwarra and the revenue payable on account of mouza Samotha (a portion of which is held by the defendants in virtue of their lease,) has, on a re-distribution of the jumma in the collector's books, been augmented.

The principal sudder ameen, holding the ground on which the plaintiffs claim an enhanced rent from the mokurureedars to be insufficient, as being in direct opposition to the express and positive terms of the pottah, and finding that the defendant had at all times been ready to pay, and had proffered payment of the rent at the rate specified in their lease, dismissed the claim of the plaintiffs in regard to the enhanced payment and annulment of the defendant's tenure, decreeing in their favor the claim to the arrears due, at the rate shown in the defendant's lease; but at the same time declaring that as the defendant had *not filed a petition every year* as the rent fell due, either in the collector's or the judge's court, proffering the amount, but had only offered to deposit the total amount due in the year 1846 A. D., default is in some measure imputable to him, and that he is accordingly liable for interest.

The appellant (one of the defendants) appeals from this award, urging that he had actually proffered the rent each year as it fell due, through his servants; but that the plaintiffs (respondents) had declined, or evaded the receipt, and that this fact having been established on the record, by parol evidence adduced by him in support of the plea. No laches or default of any kind is imputable to him, and therefore prays for exemption from the charge of interest.

The judgment of the principal sudder ameen is clearly defective.

The point to be decided in regard to the second issue of the suit, as laid down very distinctly by the late principal sudder ameen, was whether the non-payment of the rent was owing to the fault of the plaintiff, or defendant.

The defendant's plea was that he had made through his servants a yearly proffer of the rent as it fell due, and that the fault is



the plaintiffs, who declined to receive it, and in proof of his averment he adduced evidence.

The principal sudder ameen has held him liable to interest on the ground of laches proved, *without making any reference whatever to this evidence*, on the credibility of which the point at issue turned.

The ground recorded by the principal sudder ameen for the conclusion he has formed, viz., that the plaintiff had failed to file petitions, year by year, in the courts, making proffer of the rent, is insufficient. No such procedure is enjoined or sanctioned by law, and the non-performance of an unnecessary or unrequired act, cannot be imputed as a fault to the prejudice of the defendant.

It is at all events indispensable that the principal sudder ameen should distinctly record his opinion as to the credibility, or otherwise, of the evidence adduced by the appellant on this point, the decision is accordingly reversed, and the case is remanded with instructions to the principal sudder ameen to supply the omission pointed out.

The value of the stamp will be refunded to the appellant as usual.

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THE 14TH APRIL 1851.

No. 5 of 1851.

*Appeal from the decision of the Principal Sudder Ameen, Golam Asghur, dated 17th December 1850.*

Lulloo Bindheseree Dutt and others, (Plaintiffs,) Appellants,

*versus*

Muharajah Mahessur Buksh Singh and others, (Defendants,) Respondents.

THIS case, of which the particulars are recorded in No. 2 of 1851, having been remanded for re-trial, no final judgment on this appeal can be passed, it is accordingly sent to the principal sudder ameen to be kept with the original record.

The appellant will receive refund of the stamp duty as usual.

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THE 14TH APRIL 1851.

No. 15 of 1850.

*Appeal from the decision of the Principal Sudder Ameen, Golam Asghur dated 16th August 1850.*

Himmuto Ally, (Defendant,) Appellant,

*versus*

Ameer-ood-deen, (Plaintiff,) Respondent.

THE particulars of this case are detailed in No. 14 of 1850.

The appellant urges that as he disavowed and still disclaims all participation in the acts of the other defendants, he is entitled to exemption from all liability for costs, and further that the plaintiff has purposely and unnecessarily laid his suit at an over-valuation for the annoyance and injury of the appellant.

The appeal thus embraces two points of enquiry :

*First.*—The liability of the appellant for the costs of the suit.

*Secondly.*—The over-valuation of the suit by the plaintiff.

Both these pleas were advanced before the lower court, but rejected by the principal sudder ameen.

In regard to the over-valuation, it appears that the plaintiff has laid his suit at the price paid by him for the house, including the sums subsequently expended by him in their extension and improvement. To this he has added the amount of the loan as recorded in the deed of bye-bil-wuffa, for the annulment of which he sued.

Admitting that this was *unnecessary*, there is nothing to show that the plaintiff was influenced by any improper motive in thus estimating the standard of valuation. It has come before me officially in another case, that in one of the lower courts a nonsuit has been claimed and allowed on the ground of *under-valuation*, because the amount specified in each and all of several documents under which parties held possession of estates, or portions of estates, on titles adverse to the plaintiff, had not been added to the standard valuation of the property claimed.

Under such circumstances the averment of the plaintiff that he was actuated in the valuation of the present suit, by prudence and precaution, is reasonable.

It remains to be considered whether the defendant Himmuto Ally, the appellant in this case, is entitled to exemption from liability either in whole or in part.

Nothing but a very strong case of *intentional* vexation on the part of the plaintiff fully established, would, I apprehend, justify the court in deviating from the usual practice in awarding the costs of a suit.

In this case there are no such grounds of departure from the established rule. The result of the investigation has fully developed a case of fraudulent endeavor on the part of the defendants,

Heyat Beebee and Kassim Ally, to void the just title of the plaintiff, and notwithstanding the disavowal of the appellant, who is the husband of Heyat Beebee, the presumption of collusion is strong against him. He therefore stands in *pari delicto* with the other defendants, and is in no position to claim the consideration or clemency of the court.

The appeal is accordingly dismissed, and the appellant charged with his full portion of the costs.

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THE 29TH APRIL 1851.

No. 4 of 1851.

*Appeal from the decision of the Principal Sudder Ameen, Golam Asghur, 17th December 1850.*

Muharajah Mahessur Buksh Singh, (Defendant,) Appellant,

*versus*

Muharajah Deebee Buksh Singh, heir of Musst. Byjnath Kour,  
(Plaintiff,) Respondent.

THE demand, the defence, the relative position of the parties, and the points at issue in this case, are identical with those detailed in suit No. 2 of 1851.

The defendant (appellant) is the same party, and the only difference between the case is that the mokururee tenure held by the defendant, is situated in a separate portion of the estate in the possession of the plaintiff.

The judgment of the principal sudder ameen is based on the same arguments, and is open to the same objection as the judgment in the suit referred to.

The case is accordingly remanded for re-investigation and for rectification of the error pointed out.

The value of the stamp on the petition of appeal will be refunded to the appellant.

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THE 29TH APRIL 1851.

No. 3 of 1851.

*Appeal from the decision of the Principal Sudder Ameen, Golam Asghur, 17th December 1850.*

Muharajah Deebee Buksh Singh, heir of Musst. Byjnath Kour,  
(Plaintiff,) Appellant,

*versus*

Muharajah Mahessur Buksh Singh, Bakei Beharree, and Bushist Narain, (Defendants,) Respondents.

THIS case having been remanded for re-investigation on the grounds detailed in No. 4 of 1851, no final judgment can be passed

on this appeal. The papers are accordingly sent to the principal sudder ameen to be kept with the record of the case.

The value of the stamp of the petition of appeal will be refunded to the appellant.

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THE 30TH APRIL 1851.

No. 37 of 1849.

*Appeal from the decision of Caze Munour Ally, late Principal Sudder Ameen, dated 11th July 1849.*

Golab Singh and others, (Defendants,) Appellants,

*versus*

Baboo Ramessur Buksh Singh, (Plaintiff,) Respondent.

THE particulars of this case will be found in page 48 of the printed decisions of the Zillah courts, 12th June 1848.

The case was remanded for re-trial by the judge "with instructions to examine the remaining witnesses to, and the writer of the deed."

These instructions have not been fully carried into effect. The "remaining witnesses to the deed" have not been summoned; the evidence of the writer only has been taken.

The case is therefore again remanded, with an injunction to the principal sudder ameen to pay careful observance to the former orders issued on the remand of the case.

The value of the stamp on the petition of appeal will be refunded to the appellant.

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THE 30TH APRIL 1851.

No. 41 of 1849.

*Appeal from the decision of the late Principal Sudder Ameen, Caze Munohur Ally, dated 2nd August 1849.*

Baboo Koonwur Singh, (Plaintiff,) Appellant,

*versus*

Isree Singh and others, (Defendants,) Respondents.

THE plaintiff in this case claimed the right of pre-emption of a certain estate, on the ground of vicinage, alleging the due performance of the demand and protect prescribed by law.

The defendant denies both the right and the performance alleged.

The principal sudder ameen laid down the issue of the case to be "the performance or non-performance of the demand protect," thus excluding from enquiry the very essence of the claim on which the action is founded, viz.; the right of the plaintiff to pre-emption.

The decree, dismissing the plaintiff's claim, passed on so inaccurate a determination of the issues of the case, is manifestly imperfect and cannot be upheld.

The case is accordingly remanded for re-investigation.

The appellant will obtain a refund of the value of the stamp.

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THE 30TH APRIL 1851.

No. 42 of 1849.

*Appeal from the decision of Cazee Munohur Ally, late Principal Sudder Ameen, dated 2nd August 1849.*

Rajbhookun, (Plaintiff,) Appellant,

*versus*

Isree Singh, (Defendant,) Respondent.

THE plaintiff in this case claims the right of pre-emption of a certain estate, purchased by Isree Singh defendant, on the ground of partnership, alleging the due fulfilment of the prescribed demand and protect.

The defendant without denying the plaintiff's right to pre-emption, pleads the non-fulfilment of the demand and protect as required by law.

The estate under dispute is the same as that claimed on the same title by the plaintiff in case No. 41.

The same inaccuracy is apparent in the determination of the issues as in the other case.

Whether the defendant denies, admits or passes over the question of the plaintiff's right to pre-emption, it is clear, that such a right, being founded on special incidents, should be clearly established before the subsidiary points of the case are entered upon.

A decision based upon an enquiry, from which the essential point of adjudication has been excluded, cannot possibly be upheld. The case is accordingly remanded for investigation *de novo*, and as the property claimed under the right of pre-emption is identical with that in No. 41, the principal sudder ameen is directed to take up both the cases together, with a view to the determination of the relative rights of the claimants.

The value of the stamp paid for the petition of appeal will be refunded to the appellants.

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## ZILLAH SYLHET.

F. SKIPWITH, ESQ., OFFICIATING JUDGE.

THE 2ND APRIL 1851.

No. 55 of 1851.

*Appeal from the decision of Baboo Hergouree Bose, Moonsiff of  
Russoolgunge, dated 20th January 1851.*

Jumsheer Khan and Nehar Khan, (Plaintiffs,) Appellants,

*versus*

Shunukram and others, (Defendants,) Respondents.

THE respondents, who are heirs of Suroopram, sued the appellants for the value of a bond given to him on the 9th Choitro 1254.

The appellants denied all knowledge of the bond, and pleaded a quarrel with the respondent regarding land, and that Jumsheer was in Calcutta on the date of the alleged transaction.

The bond was duly proved, and as Jumsheer Khan's witnesses contradicted themselves regarding the month he had gone to Calcutta, and the person with whom he had gone as servant, the moonsiff decreed the case, observing that although a quarrel between the parties appeared to have taken place relative to a talook, it had not occurred till after the money was lent, and that the transaction was highly probable as the parties were sharers in the estate.

The appellants urge that the moonsiff held no proceeding under Act XV. of 1850, that he never examined the writer of the bond or deputed an ameen to hold a local investigation. That Churunram Deb and Fakeer Mahomed were irregularly examined, as their names were not entered in any list, and that their plea of enmity and the absence of Jumsheer in Calcutta on the date of the transaction are proved.

### JUDGMENT.

The proceeding required by Act XV. of 1850 is duly filed. The deputation of an ameen is quite unnecessary, and the appellants have not entered the name of the writer of the bond and consequently he would not be examined. There is no irregularity with regard to the depositions of Churunram and Fakeer Mahomed. The latter was duly summoned and the respondents corrected their list of witnesses, saying they had erroneously entered Bulram Deb

instead of Churunram Deb, and the subpoena was issued correctly. The plea of enmity is unavailing and is not duly proved, two witnesses depose to having heard of a quarrel between the parties, but one says it arises from a dispute about land and the other about a boat. The evidence regarding Jumsheer's absence is very contradictory, two witnesses agree as to the month he was in Calcutta, and although the appellant states he went with Osor Baboo to sell flax, the witnesses say Ulloder merchant was the person who employed and not Osor Baboo. I therefore dismiss the appeal and fine the appellants two rupees, as their appeal is vexatious and litigious.

THE 8TH APRIL 1851.

No. 7 of 1851.

*Appeal from the decision of Moulvee Saadut Ally, Principal Sudder Ameen, dated 30th March 1850.*

Bimola Dossee, mother and guardian of the children of Gorooopershad, deceased, (Plaintiff,) Appellant,

*versus*

Dullookhan and others, (Defendants,) Respondents.

THE appellant's husband Goroopershad stated that his father Nundkishore died in 1224, leaving him and two brothers his heirs; that they divided his property among them; but that some rent-free lands called Golam Huzrut, purchased by their father Shah Guda Hussen, remained in their joint occupation; that Dabeepershad, his elder brother, had charge of the papers connected with the estate, and that the respondent pretended he had bought the rent-free lands of him in 1245; but as he had no powers to sell the whole he brought the present action to recover from him one-third, being his share of the lands, together with mesne profits. On his death his wife became his representative.

Surdar Khan and others object that the appellant has not stated the date of his father's alleged purchase; that neither his father nor he had ever had possession of the estate, which in reality belongs to them, and that Guda Hussen could never have sold it as he was not the proprietor of the whole; that, if they had been in possession, their names would have been recorded as proprietors, and they would have defended the suit brought by Government for its resumption, which they did not do; and that further they advanced no claim to it on the issue of the proclamation by the special deputy collector; that, moreover, Surdar Khan pledged it as security for the nazir of the civil court, and it was reported to be in his occupation, and that even then appellant advanced no claim.

The appellant's husband, in the rejoinder, among much irrelevant matter and unnecessary repetition of the claim, admitted that the

date of purchase cannot be declared, as the brother had charge of, and will not produce the deed of sale; that his name was not recorded as proprietor, because he was absent from the district, and that the land was measured after he was dispossessed, but that it has been duly recorded in the deed of butwarrah.

The principal sudder ameen states in his decision that the appellant has altogether failed to prove that her husband's father ever purchased the land from Guda Hussien, or that either of them ever held possession of it, and he then proceeds at very unnecessary length to show that the respondent had proved his defence in all respects. He accordingly dismissed the claim.

The appellant commences her appeal by stating that it is notorious that her husband's father purchased the estate, and she then proceeds to find fault with the evidence offered by the respondent, and finishes by stating that her case is proved by a decision of the moonsiff of Russoolgunge, dated 22nd March 1842.

#### JUDGMENT.

It is unnecessary to notice the appellant's objections to the respondent's evidence, as she has altogether failed to produce any evidence in support of her own claim. She admits that the deed of sale, the very foundation of her claim, is not forthcoming, and she has been unable to give any proof that her husband, or his father or brothers ever held possession of the estate. The decree mentioned in her appeal does not help her in the least. It was founded upon a claim for rent, in which Dulloo Khan filed a petition, stating he had bought the lands from Dabepershad; but this statement can, in no way, prove her claim. I therefore confirm the decision of the principal sudder ameen, and dismiss the appeal.

The attention of the principal sudder ameen will be called to the unnecessary length of the pleadings.

THE 16TH APRIL 1851.

No. 9 of 1850.

*Appeal from the decision of Moulvie Sandut Ally, Principal Sudder Ameen, dated 29th April 1850.*

Brijmohan Das, (Appellant,) and Musst. Bobonissaree Dossee, representative of Sham Soonder Das, deceased, Defendants,

*versus*

Suroopcoomar Das and others, the heirs of Shamram Roy, deceased, Respondents.

SHAM SOONDER DAS and Shamram Roy jointly purchased talook Pertab Roy, No. 161, having an annual jumma of rupees 161-12-7, in the year 1245, and obtained possession. Shamram Roy died in the year 1249, and Sham Soonder brought this present action against his heirs for the sum of rupees 625-10-10, being the princi-



pal and interest of revenue paid by him on Shamram Roy's behalf for the years 1245 and 1247, and on behalf of his representatives for the years 1250 and 1251.

The respondents deny that Sham Soonder ever paid Shamram Roy's share of the revenue; but urge that he paid it himself through his agents Perkash Chunder Roy and Goremonee Das, and that after his death Sham Soonder collected the rents himself, and liquidated the revenue from them, and that, moreover, he had borrowed several sums of money from Shamram, to recover which they had brought actions against him.

The principal sudder ameen decided against the claim as he considered it proved; that Perkash Chunder was a servant, and Goremonee, a relative of Shamram Roy, and by them the greater part of the revenue was paid; and that the ledger books of the deceased showed that various sums were paid to them on account of revenue; that Sham Soonder owed various sums of money to Shamram Roy, and yet had never demanded from him a set off on account of the present claim, which indeed he never advanced till the heirs of Shamram sued upon the bonds, and that after the death of Shamram Roy, Sham Soonder himself and his gomashtha collected the rents, and from them liquidated the revenue, and yet he had omitted to file any debtor and creditor account.

The appellants urge, first, that it is proved that Perkash Chunder and Goremonee were the agents of Sham Soonder, and obtained from the collector's treasurer receipts for the revenue paid by them; secondly, that the account books of Shamram do not tally with his defence, or the receipts received from the treasurer; thirdly, that when Sham Soonder borrowed money, it was unnecessary to mention the present claim; fourthly, that Manick Chund was the gomashtha of both parties, and that Pagulram Mundul was appointed to collect from several talooks, and that there is no evidence to show that he paid the revenue from the rents collected from the estate.

#### JUDGMENT.

In this case it is necessary to consider the claim advanced, under two heads, first, the sums alleged to have been paid on behalf of Shamram Roy for the years 1245 and 1247; and secondly, those alleged to have been paid on behalf of the appellants in the years 1250 and 1251.

The evidence adduced in the case proves that Perkash Chunder and Goremonee were the agents of both parties, and that by them the greater part of the revenue, the subject of the present action, was paid. Perkash Chunder is dead and Goremonee has not been cited by either party; but the appellant has produced several witnesses to prove that the revenue paid by them was given to them by Sham Soonder, I can give, however, on credence to their testi-

mony. Munoo Singh mentions various sums paid by him on various dates in a very exact manner; but it is impossible he could have done so unless he had been tutored. He himself throws doubt upon his own testimony by saying that he was always present when Sham Soonder paid or received any money, but that he was no servant of his, but attended him because he was a rich man.

Bishtopershad Dutt says, Sham Soonder paid the money to him and Goremonee and Perkash Chunder, and that he fetched it from his own house; but it is shown by the bonds that at this very time Sham Soonder was a needy man, and had borrowed money from Shamram Roy; and it is not ever pretended that the money so borrowed was applied by him to the liquidation of the revenue. The ledger books of Shamram Roy, which are old and worm-eaten, are not called in question by the appellant, and yet in them various sums are entered as paid on account of the revenue of the talook Pertaub Roy, No. 161, to Perkash Chunder or others on or about the dates recorded in the collector's receipts. As pointed out by the appellant there are discrepancies between the books and defence and dakhillas; but they are immaterial, for in some places more in others less than the sums mentioned in the defence are written off as expended, so I consider it proved that the money paid by Perkash Chunder and others was, in reality, given to them by Shamram Roy.

With regard to the second head, it is proved by the respondents' witnesses, and Bishnopersad Dutt, a witness of the appellant, that after the death of Shamram Roy, Sham Soonder and his gomashtha Manick Chunder, collected the rents, and it must be presumed that they were applied to the liquidation of the revenue, and although the appellant asserts that Manick Chunder was the agent of both parties, there is no evidence in support of the assertion. Pagulram was, as the appellant states, appointed as mundul for several talooks, but this appears to be immaterial to the point at issue. Under these circumstances, I confirm the decision of the principal sudder ameen, and dismiss the appeal.

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THE 21ST APRIL 1851.

No. 154 OF 1849.

*Appeal from the decision of Baboo Sharodapershad Ghose, Moonsiff of Ajmereegunge, dated 30th April 1849.*

Rajkishore Das, (Defendant,) Appellant,

*versus*

Sheikh Meher Oollah, (Plaintiff,) Respondent.

THE respondent sued to recover 50 rupees extorted and 29 rupees worth of property plundered from him by the appellant on the 9th Kartick 1252.

The appellant pleaded that there is an old enmity between him and the respondent and his brother, and that both parties brought complaints before the magistrate; that he was fined for assaulting the respondent, and that his countercharge was wrongfully dismissed; not having received a full investigation.

The moonsiff deputed an ameen to hold a local investigation, who reported the claim not proved; but the moonsiff, disregarded his opinion, and relying on the depositions of the witnesses taken before himself and the previous investigations and decisions of the magistrate and sessions judge, decreed the claim.

On the 3rd of April 1850, my predecessor recorded his opinion that there was no proof of the respondents having been robbed of 29 rupees worth of property, and compelled to pay rupees 50 in cash, and he therefore reversed the moonsiff's decision, and dismissed the claim.

The respondents appealed specially to the Sudder Court, who reversed the decision on the 19th August 1850, as they considered the decisions of the magistrate and sessions judge entitled to respect, and that it behoved this court to state its reasons for setting them aside. They ruled also that the reasons of appeal should be clearly set forth.

The case was taken up in March, and the following objections were recorded for decision :

First, that there is enmity existing between the parties; secondly, that the decisions of the criminal courts in which the moonsiff's decision is based are incomplete; thirdly, that the respondent states that the affair took place, it is alleged, at Kumalpore Ghat, and yet no witness from that village has been cited by the respondent; fourthly, that in the criminal courts the respondent charged one Soobul Das with plunder; but that as no such person is in existence, he has fraudulently sued him as *Dagoo Das alias* Soobul Das; fifthly, that there is no person of the name of Soobul Das in mouza Mohumudpore, no Lochun in Kumalpore; that Lakoo Kybert died before the institution of the suit, and that Gooloo is gone to Gownpore; sixthly, that he charged him before the magistrate with carrying the plunder into effect as on behalf of Oosubram as his mooktear, and yet that he has not brought his action against Oosubram Pal at all.

#### JUDGMENT.

From the papers filed in the case it appears that a quarrel subsists between the parties relative to some land; but it is evident that in consequence of this dispute the appellant illtreated the respondent as set forth in the plaint, and proved before the criminal courts. The only reason assigned by the appellant for considering the decisions of the foudjaree courts incomplete is, that a local investigation was not held. This is no valid reason both parties pro-

duced their evidence before the magistrate and it was clearly proved that the respondent was imprisoned by the appellant on the 9th Kartick 1252, the very date on which the appellant brought the countercharge against the respondent. The appellant's charge was consequently dismissed by the magistrate, and he was fined for illegally imprisoning the respondent, and he has adduced nothing in the present case to lead me to suppose that that decision, or the decision of the sessions judge, which upheld it, was wrong. The ameen indeed deputed by the moonsiff has recorded his opinion that the case was not proved, but his opinion is based upon insufficient evidence. Certain witnesses, who deposed before him stated they did not see the plunder while others as positively deposed to the fact. The witnesses on behalf of the respondent live close to Kumalpore, so that they be considered to be as good evidence as if they lived in Kumalpore itself, and they depose that Soobul Das is some times called Dagoo Das, and that Soobul and others have changed their place of abode since the plundering was effected, so that the 4th, 5th and 6th pleas of the appellant are unavailing. The respondent's pleader explains that his client purposely omitted to sue Oosubram, as although he charged him in the criminal courts, he was unable to prove, charge against him. This explanation is to me satisfactory. I confirm the moonsiff's decision, and dismiss the appeal, with costs.

. . .

THE 21ST APRIL 1851.

No. 40 of 1851.

*Appeal from the decision of Baboo Sharodapersad, Moonsiff of Ajmeree-gunge, dated 28th December 1850.*

Bussooram Shah, (Defendant,) Appellant,

*versus*

Rammohun Shah and another, (Plaintiffs,) Respondents.

THE respondents brought this action to set aside a summary decree for rent of a deputy collector, dated the 16th June 1849, alleging that they held no land of the appellant, who called himself a putneedar, and they denied that they had ever executed to him a kubooleut.

The appellants pleaded that the respondents occupied their land in 1250, and that on suing them for rent they paid it, and that they had done so till 1253; that on the 11th of Bysack 1254 they executed a kubooleut jointly with Ramshah and others for the land in their occupation, but that withholding the rent he sued them and obtained a decree.

The moonsiff has given an opinion that the respondents are not the ryots of the appellant, and that they pay rent to moulvee

Idris Khan's descendants, and he therefore reversed the decision of the deputy collector, and hence the appeal.

### JUDGMENT.

The only point in this case for the moonsiff to decide was, did the respondents voluntarily execute the kubooleut or not; but upon this point he has not given any decision. The regular suit to reverse a summary decision is declared to be regarded as an appeal, and the moonsiff therefore ought to have stated his reasons for setting aside the decision of the deputy collector, but this he has omitted to do. I therefore reverse his decision, and return the papers to him that he may dispose of the case as above pointed out to him. The appellants are entitled to the value of his stamps.

THE 23RD APRIL 1851.

No. 1 of 1850.

*Appeal from the decision of Moulvee Nazeerooddeen Mahomed, Sudder Ameen, dated 6th August 1850.*

Chunder Debeah, relict of Ramkanie Surmah, Appellant,

*versus*

Lalchund Das, Respondent.

THIS is a suit for rupees 546, being the value of a bond, with interest, given by Ramkanie, deceased, to the respondent, on the 19th Assar 1253.

Ramkanie denied the transaction, and pleaded a quarrel with the respondent relative to land, which rendered it altogether incredible.

The respondent admits that he has sued Ramkanie jointly with others for possession of land, but urges that he borrowed the money for the purchase of another estate from which he said he would satisfy his claim.

The principal sudder ameen originally tried the suit and dismissed it as not proved; but his decision was reversed on the 14th September 1848, and the case was transferred to the court of the sudder ameen, who had in the mean time been appointed.

He states, in his decision, that the execution of the bond is duly proved by witnesses, and that their testimony is supported by the ledger in which the transaction is entered; that it is true the respondent has sued Ramkanie for the recovery of land; but that this does not render the transaction improbable as he may have lent the money either with the view of obtaining interest on it or with the view of softening Ramkanie, so as to induce him to desist from offering any opposition to his claim upon the lands.

That the transaction is a matter of general notoriety, and that the vakeels of the court of the moonsiff of Russoolgunge and

other respectable persons have deposed to its being so, and though Ramkanie's signature on the bond is dissimilar to that on the vakalutnamah filed in the case, yet it agrees with his signature on many other papers filed in the judge's office, so that he has doubtless altered his usual style of writing, when he signed the vakalutnamah with the intention of throwing doubts upon the signature, upon the bond. He therefore decreed the case.

The appellant, who represents Ramkanie, urges, first, that the existence of a quarrel relative to land is duly proved, and that the witnesses, who have deposed to the execution of the bond live a long way from the residence of the parties; secondly, that the respondent says her husband borrowed rupees 100, on the 18th Assar only, as he had no stamp paper, and rupees 500 on the 19th, when he repaid the first 100 rupees, and that the bond itself proves the falsehood of the assertion as the paper on which it was engrossed was purchased previous to the date of the transaction; thirdly, that the assertion of the sudder ameen that the respondent lent him money with the view of softening him or of obtaining interest is a pure assumption, as the respondent has not advanced any such plea; fourthly, that the witnesses contradicted themselves as to the place where the bond was written; fifthly, that the evidence of Jegernath and Sirikishen disprove the claim relative to the land, and that a letter filed to prove Ramkanie's admission of the debt is inadmissible, it not having been filed till two years after it had been called for; and lastly, that the suit for land was instituted previous to the present action, and yet no mention of this was made, and that he (Ramkanie) offered to pay the respondent's claim if he would swear to its being just, but that he refused to do so.

#### JUDGMENT.

After reading through the evidence filed in the case, I can discover no reason for disagreeing with the opinion expressed by the sudder ameen. The suit for land was disposed of by me on the 25th of March last, and nothing in that case transpired to show the improbability of a money transaction between the parties. I entirely coincide with the view taken of this point by the sudder ameen. The statement made in the second plea was not advanced by the respondent in his pleadings in this case; but it is mentioned in his petition of appeal. In it he says he had not the stamp paper for a bond, evidently meaning with him when he was borrowing the money, so that the purchase of the stamp paper three or four days before does not affect his statement in the least.

The discrepancies alluded to by the appellant in the fifth plea are immaterial. Some of the witnesses say the bond was written in the south dullan, others in the western one of the house; but all agree as to the transaction, and the pleader of the respondent

explains that it is one dullan with a passage running through it. The other pleas advanced require no special notice. I therefore confirm the sudder ameen's decision, and dismiss the appeal, with costs.

THE 29TH APRIL 1851.

No. 15 of 1850.

*Appeal from the decision of Moulvee Saadut Ally Khan Bahadoor,  
Principal Sudder Ameen, dated 26th September 1850.*

Dolegobind Das and others, Appellants,

*versus*

Mahomed Nazir Chowdree and others, Respondents.

THE appellants, who are auction purchasers, brought this action to recover possession of 73 k. 2 js. 1 r. 1 p. of land, alleged by them to be situated in mouza Doouj, and appertaining to their talook No. 4, Asodool Reza, pergunnah Jowar Buniachung.

The respondents pleaded that the lands are situated in mouza Deraye, and appertains to talook Mahomed Ashruf, No. 8, pergunnah Khalisa Betal and talooks Mahomed Samee No. 9, and Mahomed Nazir No. 10, and Rajindro Ram No. 5, pergunnah Nawara Betal; and that they have held undisputed possession since the year 1816, when their father was put in possession in virtue of a decree obtained by him under Regulation XLIX. of 1793.

The particulars of this case are fully set forth at page 83 for the decisions of this district for the 1st June 1849.

The decision of this court was reversed by the Sudder Dewanny Court on the 6th March 1850, for the following reasons:—"The lower courts grounded their decision upon the dispossession of plaintiff's predecessors and the possession of the defendants from 1816 to 1835, which, in their view, was held adverse to the plaintiffs also, and dismissed their plaint.

"The provisions of Section 29, Regulation XI. of 1822, transfer to an auction purchaser of the estate all the property and privileges which the engaging party possessed and exercised at the time of settlement free from any accident, incumbrances, &c. Every succeeding auction purchaser has therefore a new ground of action."

The case was therefore returned for disposal on its merits to the principal sudder ameen. In his present decision that officer observes that with some trifling difference the boundaries of the lands claimed are agreed upon by both parties, but that neither party can give any evidence that the lands were held by the owners of the respective talooks in dispute at the decennial settlement; that the mouzawaree papers merely record the amount of land and the names of the villages

where it is situated, but not the boundaries, and that therefore the case must be decided by the best evidence the parties can give. On behalf of the appellant the best evidence offered is a decree of the provincial court, dated the 12th December 1829, to which the respondent was not a party. It was in favor of Bahadoor Reza, the former proprietor, and lands asserted to lie within the boundaries laid down in the present plaint were awarded to him. Those boundaries were not laid down in the original plaint, nor in appeal before the judge; but a statement of them was filed in the provincial court of appeal, and the principal sudder ameen therefore did not consider them to be conclusive evidence, especially as Mahomed Reza never took out execution of the decree. He considered the decree to have been obtained in collusion with Durpnarain and others, the appellants in the case. The next best evidence filed is a mortgage deed of the lands in the village in dispute given by the former proprietor to one Jeetram, but no boundaries are mentioned therein so that this was deemed by him insufficient. The testimony of the witnesses of both parties he rejected as utterly worthless.

The defendants filed a decree obtained by their ancestors on the 17th February 1816 against Durpnarain, (the adverse party in Bhadoor Reza's suit) and the boundaries of the lands given in that decree are precisely similar to those laid down in the present claim; that decree clearly shows that the lands belonged to the respondent's talooks, and they have been held as part of them ever since 1816. He considered the appellant to have failed in proving his claim, and he therefore dismissed it.

The appellant denies that there was any collusion between the parties mentioned above in the court of appeal, and considers his claim proved by the decree so obtained as well as by the mortgage bond of Jeetram, and he urges that the zemindar did not take out execution of decree as the adverse party quietly resigned the lands into his possession.

#### JUDGMENT.

I agree with the principal sudder ameen in considering the appellant to have totally failed to show that the lands in dispute were held by the former proprietor at the decennial settlement, and he admitted indeed in the lower court that he had no evidence to offer. The decree upon which he founds his claim I consider worthless. In the two first counts no boundaries were laid down by the claimant, and though he filed in the court of appeal a statement of them and obtained a decree agreeably to them, no enquiries were made as to their correctness. Whether therefore the decree was obtained collusively, or not, signifies little. The boundaries so inserted cannot be considered evidence, especially against one who was not a party to the suit. The mortgage bond is useless as



evidence in the present claim, for there are no boundaries mentioned in it, and it is open to suspicion, but though it was given after the decree laying down the boundaries was passed, no boundaries are mentioned in it. The appeal is dismissed, but the respondent, who has not been summoned, must pay his own costs.

THE 30TH APRIL 1851.

No. 1 of 1851.

*Appeal from the decision of Moulvee Nazeeroodeen, Sudder Ameen, dated 11th February 1851.*

Kishen Chunder Soormah, Appellant,

*versus*

Doorga Ram Pal and others, Respondents.

THE respondent sued to obtain possession of 10 k. 1 k. 3 p. of land, situated in mouza Halhaleah, as appertaining to his talook Lubinee Das, No. 1.

The appellant pleaded that the lands belong to talook Suloo Bunnoo No. 98, and are situated in mouza Pilampore.

The sudder ameen has decreed possession, observing that the respondent has proved his title to the talook and his right to the disputed lands by the mozawaree papers, chittas and oral evidence adduced by him, and that the appellant has omitted to file any evidence whatever; that an ameen twice deputed to measure the lands and compare them reports them to belong to the respondent, and that this fact is further borne out by some penal recognizances entered into by the appellant to keep the peace.

The appellant merely states, in his appeal, that there was a dispute between him and the respondent for some land situated to the south-west of the land now claimed, and that in consequence thereof both parties were bound down to keep the peace; that he objected to the ameen's local investigation, and still objects as he was not present when it was made.

#### JUDGMENT.

The grounds of appeal are not sufficiently specified. The appellant states nothing for the court to decide upon, nothing to lead one to suppose that the decision is incorrect. On examining the record I observe that on the ameen's sending in his report, the appellant presented a petition, saying it was incorrect, and praying that another ameen might be sent out. The particular reasons of his dissatisfaction were not set forth, but the sudder ameen directed the ameen to hold a second investigation. This he did, and the appellant, on his report being filed, merely gave in a petition, stating

that he had not gone to the ground; but he did not ask the sudder ameen to enquire into his allegation, nor did he, as he has done here, say he was not present when the investigation was held. His plea here shows that the former one was incorrect. I see no reason, and the appellant has advanced none for questioning the propriety of the sudder ameen's decision, and I accordingly confirm it, and dismiss the appeal.

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## ZILLAH TIPPERAH.

PRESENT : H. STAINFORTH, Esq., JUDGE.

THE 14TH APRIL 1851.

No. 100 of 1850.

*Appeal from the decision of Moulvee Rumeezooddeen, Moonsiff of Noor-nugger, dated 24th April 1850.*

Nubkishen Rai, Appellant,

*versus*

Bukshoo and Alah Buksh, (Plaintiffs,) Respondents.

APPELLANT sued for rupees 4, 13 annas, 9 pie, the rent from the 12th Phalagoon 1251 to 25th Poos 1256, of a piece of ground his property, under purchase on the former date, with interest.

Bukshoo filed an answer resisting the claim, and declaring the land to have been the property of Madhoo Ram and others, and to have been purchased in 1251 by Ameena Beebee, to whom he pays rent.

Ameena Beebee filed a petition in which she alleges purchase of the land from Madhoo Ram, on the 8th Bhadoon 1251; and that she has since received rent, &c.

Appellant filed a reply in which he declares purchase from Imdad Allee, a former moonsiff, who had bought it in his wife's name.

The moonsiff (Moulvee Rumeezooddeen) dismissed the suit, because appellant's possession was not proved, seeing that it was not proved that the person from whom he declares purchase had ever received rent for the land, and was moreover proved by appellant's witnesses to have executed a kubooleut in favor of Ameena Beebee; and because it was improper to give a decree for rent till the question of proprietary right should be determined, &c. &c.

Appellant now urges that one of the persons sued, conscious that the claim was just, had not resisted it, while the other had been gained over, that he is in possession, &c.

### JUDGMENT.

Appellant, on his own showing, has never received rent on account of the land for which he now claims it, and his right to do so is impugned by Ameena Beebee, under plea of purchase by herself, and it is, moreover, resisted by one of the persons sued, the

other not appearing. Under these circumstances, until the question of proprietary right be determined between the conflicting claimants to it, no decree can pass in appellant's favor for the rent which he claims.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be affirmed, and the appeal dismissed; appellant paying the costs of his appeal, and Ameena Beebee her own costs.

THE 14TH APRIL 1851.

No. 101 of 1850.

*Appeal from the decision of Moulvee Rumeezoodeen, Moonsiff of Noor-nugger, dated 24th April 1850.*

Nubkishen Rai, Appellant,

*versus*

Mahomed Summee, Respondent.

APPELLANT sued for rupees 4, 13 annas, 9 pie, the rent of a piece of ground, from the 12th Phalagoon 1251 to the 25th Poos 1256, with interest; declaring purchase on the former date.

Mahomed Summee answered resisting the claim, and pleading that he paid rent to Ameena Beebee, who purchased the land in 1251 B. S.

Ameena Beebee filed a petition opposing the claim, and alleging purchase of the land on the 8th Bhadoon 1251, and being in the receipt of rent from Mahomed Summee.

The moonsiff (Moulvee Rumeezoodeen) referred to his decision, appealed under No. 100, and dismissed the claim.

Appellant now avers the denial of respondent to be collusive, and that his (appellant's) possession is proved.

JUDGMENT.

Appellant, on his own showing, has never received rent for the land; the person sued avers that he pays to Ameena Beebee, who declares that the land is her's, and that she receives the rent. Under these circumstances until the question of proprietary right be decided between appellant and Ameena Beebee, no such decree as the one sought from me can pass in appellant's favor.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed; appellant paying the costs of his appeal, and Ameena Beebee her own costs.

THE 14TH APRIL 1851.

No. 102 of 1850.

*Appeal from the decision of Moulvee Rumeezooddeen, Moonsiff of Noor-nugger, dated 24th April 1850.*

Nubkishen Rai, Appellant,

*versus*

Mahomed Suffee, Respondent.

APPELLANT sued for rupees 4, 13 annas, 9 pie, the rent of a piece of ground, from the 12th Phalagoon 1251 to the 25th Poos 1256, with interest; declaring purchase on the former date.

Mahomed Suffee answered, resisting the claim, and pleading that he paid rent to Ameena Beebee, who purchased the land in 1251 B. S.

Ameena Beebee filed a petition, opposing the claim, and alleging purchase of the land on the 8th Bhadoon 1251, and being in the receipt of rent from Mahomed Shuffee.

The moonsiff (Moulvee Rumeezooddeen) referred to his decision, appealed under No. 100, and dismissed the claim.

Appellant alleges that his possession is proved, and that the defendant's denial is collusive.

#### JUDGMENT.

Appellant, on his own showing, has never received rent for the land; the person sued avers that he pays to Ameena Beebee, who alleges that the land is her's, and that she receives the rent. Under these circumstances until the question of proprietary right be decided between appellant and Ameena Beebee, no such decree as the one sought from me can pass in appellant's favor.

#### IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decision of the moonsiff affirmed; appellant paying the costs of his appeal, and Ameena Beebee defraying her own costs.

THE 14TH APRIL 1851.

No. 103 of 1850.

*Appeal from the decision of Moulvee Rumeezooddeen, Moonsiff of Noor-nugger, dated 24th April 1850.*

Nubkishen Rai, Appellant,

*versus*

Mahomed Alee and others, Respondents.

APPELLANT sued for rupees 4, 13 annas, 9 pie, the rent for a piece of ground, from the 12th Phalagoon 1251 to the 25th Poos 1256, with interest; declaring purchase on the former date.

Mahomed Alee, Fuzul Alee, and Mahsoo confessed judgment.

Ameena Beebee filed a petition, opposing the claim, and alleging purchase of the land by herself on the 8th Bhadoon 1251, and that she receives the rent of it.

The moonsiff (Moulvee Rumeezooden) referred to his decision, appealed and decided this day under No. 100, and dismissed the claim.

Appellant now urges that the confessions of judgment entitle him to a decree in his favor.

#### JUDGMENT.

The fact of the person sued having confessed judgment does, in my opinion, entitle appellant to the decree sought by him, which, however, will, of course, have no prejudicial effect on any claim which Ameena Beebee may wish to prefer or on possession if she holds any.

#### IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the claim decreed, with costs and interest to date of realization against the persons sued. Ameena Beebee will defray her own costs.

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THE 14TH APRIL 1851.

No. 104 of 1850.

*Appeal from the decision of Moulvee Rumeezooden, Moonsiff of Nour-nugger, dated 24th April 1850.*

\* Nubkishen Rai, Appellant,

*versus*

Sheikh Budhoo, Respondent.

APPELLANT sued for rupees 4, 13 annas, 9 pie, the rent of a piece of land, from the 12th Phalagoon 1251 to the 25th Poos 1256 B. S., with interest; declaring purchase on the former date.

Sheikh Budhoo confessed judgment.

Ameena Beebee filed a petition, opposing the claim, and alleging purchase of the land by herself, on the 8th Bhadoon 1251, and that she receives the rent of it.

The moonsiff (Moulvee Rumeezooden) referred to his decision, appealed and decided this day under No. 100, and dismissed the claim.

Appellant now urges that the confession of judgment entitles him to a decree in his favor.

#### JUDGMENT.

The fact of the person sued having confessed judgment does, in my opinion, entitle appellant to the decree sought by him, which, however, will, of course, have no prejudicial effect on any claim, which Ameena Beebee may wish to prefer on possession, if she holds it.

## IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the claim decreed, with costs and interest to the date of realization against the person sued. Ameena Beebee will defray her own costs.

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THE 14TH APRIL 1851.

No. 105 of 1850.

*Appeal from the decision of Moulvee Rumeezoodeen, Moonriff of Noornugger, dated 24th April 1850.*

Nubkishen Rai, Appellant,

*versus*

Mahomed Hossein and others, (Plantiffs,) Respondents.

APPELLANT sued for rupees 4, 13 annas 9 pie, the rent of a piece of ground, from the 12th Phalgun 1251 to the 25th Poos 1256, with interest; declaring purchase on the former date.

Mahomed Hossein, Meelun and Shuddoo, filed a confession of judgment.

Ameena Beebee filed a petition, opposing the claim on the plea of her having purchased the land of the rent in suit on the 8th Bhadoon 1251, and having received rent.

The moonsiff (Moulvee Rumeezoodeen) referred to his decision, appealed and decided this day under No. 100, and dismissed the claim.

Appellant now urges that the confession of judgment is sufficient to entitle him to a decree in his favor.

## JUDGMENT.

The confession of judgment appears to me sufficient to entitle appellant to the decree he seeks, such decree will, of course, have no prejudicial effect on any claim, which Ameena Beebee may prefer or on possession, if she holds it.

## IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the claim decreed against the person sued, with costs and interest to the date of realization. Ameena Beebee will defray her own costs.

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THE 14TH APRIL 1851.

No. 158 of 1850.

*Appeal from the decision of Moulvee Ullee Hyder, Moonsiff of Comillah, dated 31st July 1850.*

Bholanath Bhutacharj, Appellant,

*versus*

Ramkaunt Dut and Ramsontose Dut, Respondents.

APPELLANT sued for Sicca rupees 27, with interest. He states that on the 19th Bhadoon 1248 T. *Æ.*, respondent gave him a bond for the said amount, the balance of an old account, rendering it payable 14 rupees on the 29th Maugh, and 13 rupees on the 29th Phalagoon of the said year; but that the bond was stolen on the 3rd Jyte 1249, as stated to the magistrate on the 19th idem.

Ramkaunt Dut filed an answer, denying having executed the bond, and there being any old balance due from him, and alleging that he would not give evidence in the case instituted under Act IV. of 1840 by Churamunee Surmah appellant's brother; that he had a dispute in last Kartick with appellant, who wanted to catch fish in his tank, and that this suit has been made up in consequence, and he added that there was no statement how the alleged old balance accrued, &c., and that at the time the bond is averred to have been executed, his brother, Ramsontose (respondent) was a minor; and he connected, on the fact that the suit was not instituted till eight years had elapsed after the date on which the bond is alleged to have been stolen.

Appellant denies, in his reply, the assertion of enmity between the parties, observing that he is respondent's priest; and that when a new document had been executed, there was no necessity for going into the particulars of the old one; that when the bond was executed, Ramsontose was twenty or twenty-one years of age; that he delayed in suing on account of respondent's promises; and that defendant offered 42 rupees to settle the claim after the institution of the suit.

Ramkaunt Dut filed a rejoinder, supporting his answer, and alleging that, if his brother were sent for, his age would be apparent.

The moonsiff (Moulvee Allee Hyder) held the evidence of the two witnesses adduced by appellant insufficient to establish his claim. He observed that they were illiterate, and that they did not live where the parties to the suit live: and he noticed that the list of property stolen, given to the magistrate by appellant's brother, was not signed by the magistrate; that the petition, which accompanied it deprecated search; and that the suit was preferred seven years after the alleged theft; and on these grounds, he dismissed the claim.

Appellant now urges that the evidence, to a bond, of persons who live at a distance is not invalid under any law ; that execution of the bond is proved ; that oral evidence is sufficient, under a decree of the Sudder Court, and one by this court to support a claim, if the bond be lost ; that the two remaining persons, who witnessed the bond have been gained over by respondents ; that, though the moonsiff has remarked on the suit having been brought seven years after the theft of the bond, the law allows a suit to be brought within twelve years from the cause of it ; that as he had no clue he could only deprecate search ; and that the list of property stolen is mentioned in his petition, which bears the magistrate's signature, &c.

#### JUDGMENT.

Appellant states, in his plaint, that this suit is brought eleven years, three months, six days, after the date of the bond, and it may have been so preferred ; but there is no proof that it was instituted within the time allowed by the law, seeing that the witnesses have been unable to fix the year in which the bond was executed. Under these circumstances I must affirm the moonsiff's decree, dismissing the claim as not being shown to have been brought within the prescribed time.

#### IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

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THE 14TH APRIL 1851.

No. 179 of 1850.

*Appeal from the decision of Syud Ullee Hyder, Moonsiff of Comillah, dated 27th August 1850.*

Gholam Russool and others, Appellants,

*versus*

Kurreem Buksh, Respondent.

THIS case was decided *ex parte* by the moonsiff, and it is useless to enter into its particulars, for the appeal and record of the case show that the witnesses to the proclamation of the institution of the suit are not such persons as are contemplated by Clause 1, Section 22, Regulation XXIII. of 1814 ; moreover, the proclamation has been issued illegally, for by Clause 2, Section 22, Regulation XXIII. of 1814, it should be the consequence of a certificate on the back of the notice "that after diligent search, the defendant cannot be found, or that he has refused to give the required written acknowledgment," and no such certificate either in the soorut-haul brought in by the peadah, or the endorsement by the nazir on the notice, exists. Under these circumstances I must remand the suit for re-trial *de novo*.

**IT IS THEREFORE ORDERED,**

That the decree of the moonsiff be reversed, and the suit remanded for trial in conformity with the foregoing remarks. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to the remaining costs of appeal.

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THE 14TH APRIL 1851.

No. 1 of 1851.

*Appeal from the decision of Baboo Rajnarain Mookerjea, Moonsiff of Nassirnugger, dated 8th December 1850.*

Musst Doollubee, Appellant,

*versus*

Kungalee Chung and Rugoonath Chung, Respondents.

APPELLANT sued for 15 head of cattle, the produce of a cow given to her on her marriage by her brother, which cattle had been appropriated to themselves by respondents, the sons of her late husband's other wife, and with whom she formerly lived.

Kungalee Chung filed an answer, alleging that he inherited the cattle which he possesses from his father; that an old cow and calf had been given to appellant when she was married, but that these had been long dead; that Kewul Chung, her brother, had enticed appellant away, and that the suit had been made up with aid of one Rajnarain Sein, with other immaterial matter.

The moonsiff (Baboo Rajnarain Mookerjea) observed that respondents were unable to adduce their witnesses, but had prayed for judgment on the evidence brought forward by appellant; that the four witnesses adduced by appellant had not been able to say how many calves the cow had had, and that one of them had stated that she had only lived five years after she was given to appellant, and he finally dismissed the claim.

Appellant now urges, among other matters, that respondents have adduced no evidence to show that the cattle were inherited by them from their father; that her claim is proved, and that she has more evidence available.

**JUDGMENT.**

The persons sued are clearly proved to have kept 15 head of cattle, descended from a cow given to appellant about 35 years ago on the occasion of her marriage, and holding the claim proved.

**IT IS THEREFORE ORDERED,**

That the decree of the moonsiff be reversed; that Kungalee Chung and Rugoonath Chung do deliver appellant the 15 head of cattle claimed by her; and that they do make good her cost with

interest from the date of the moonsiff's decision to the date of realization, and that the moonsiff be informed that I do not for the present take further notice of his decision in this simple case; but that, if I find more so discreditable to him, I shall submit a report on the subject to the Sudder Court.

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THE 14TH APRIL 1851.

No. 24 of 1851.

*Appeal from the decision of Moulvee Ruhumutoollah, Moonsiff of Jugurnath Diggy, dated 9th December 1850.*

Tiloke Singh, Appellant,

*versus*

Shumshere Mahomed and others, Respondents.

THE moonsiff has dismissed the present suit, because appellant did not adduce proof of the due issue of the prescribed notices to Ussuroodeen, one of the persons sued; and he cites, as his authority for so doing, the decision of the Sudder Court in the case of Hurry Mohun Mujmoodar *versus* Shamachurn and others, dated 20th July 1850, but that decision is not *ad rem*, and does not direct dismissal of a suit in default of proof of the service of notices. I must therefore remand this suit.

• . .  
IT IS THEREFORE ORDERED,

That the decision of the moonsiff be reversed, and the suit remanded with reference to the opinion expressed above. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to appellant's remaining costs. Shumshere Alee, who has appeared without being summoned, will pay his own costs.

THE 15TH APRIL 1851.

No. 169 of 1850.

*Appeal from the decision of Moulvee Ruhumotoollah, Moonsiff of Jugurnath Diggy, dated 27th August 1850.*

Baker Mahomed, Appellant,

*versus*

Sewa Ghazee and others, Respondents.

THIS suit has been illegally decided, seeing that no proceeding was held by the moonsiff under Section 10, Regulation XXVI. of 1814, extended to the moonsiff's courts by Act XV. of 1850, which the report of the record-keeper of this court shows to have been transmitted to the moonsiff in May last, though the pleadings were not

completed till the 22nd June following. Under these circumstances I must remand the suit.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for re-trial with reference to the foregoing remarks. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to the remaining costs of appeal.

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THE 15TH APRIL 1851.

No. 183 of 1850.

*Appeal from the decision of Baboo Gopeenath Moetro, Moonsiff of Soodharam, dated 19th September 1850.*

Zukeeooddeen, Appellant,

*versus*

Ameenooddeen, Respondent.

APPELLANT stated, in his plaint, that on the 16th Maugh 1245, respondent took under a hisab an advance of 10 rupees, agreeing to give him 15 maunds of husked rice on the 20th Chyte following, without fulfilling his agreement, and appellant now sues for rupees 15, the present value of rice in the bazar.

Respondent admitted execution of a hisab, and receiving an advance of 10 rupees, but denied that there was any real agreement to give either rice or interest, though agreement to give rice was inserted to ensure speedy re-payment; and he pleaded that, at appellant's instance, he paid the money to Mahomed Wassil, appellant's nephew; and that had the money remained due, 11 years would not have been allowed to lapse before institution of the suit.

The moonsiff (Baboo Gopeenath Moetro) observes, in his decree, that one of the witnesses to the hisab, Shurrafoodeen, has stated 10 rupees were borrowed; but that there was no agreement to repay in rice or with interest, and that the money has been repaid; that Waris, the other witness examined on appellant's behalf, has stated that he had heard of the loan from respondent's mouth; but had given no definite account of it; and that appellant did not produce the rest of his witnesses, while, on the other hand, repayment was substantiated by respondent's witnesses, and on these grounds he dismissed the claim.

Appellant now urges that the moonsiff states that *he* produced Surrafoodeen and Waris, whereas he was in Calcutta, and they were brought forward by *respondent*; that respondent admitted taking the advance and executing the hisab, and thus no doubt could rest on the reality of the transaction, and there was no necessity for appellant to adduce the evidence of witnesses, but that he was about to do so when his case was dismissed, &c.

## JUDGMENT.

The transaction declared by appellant is a stale one; but it is admitted to have occurred; moreover, the hisab is held by appellant, and respondent took no receipt for the payment, which he asserts himself to have made in liquidation, and does not attempt to account for the non-recovery of the hisab from appellant. Under these circumstances I distrust the evidence of the witnesses *quoad* the re-payment; but I must remand the suit, because the moonsiff has not prescribed under Section 10, Regulation XXVI. of 1814, as an issue to be proved by appellant, the bazar price of rice at the time the suit was instituted, which respondent's answer cannot be taken to admit.

## IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for re-trial. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to the remaining costs of appeal.

THE 15TH APRIL 1851.

No. 197 of 1850.

*Appeal from the decision of Moonshee Mahomed Walee, Moonsiff of Begumgunge, dated 7th September 1850.*

Shurkut Alee, Appellant,

*versus*

Brija Kishore Rai, Respondent.

RESPONDENT sued for rent, and appellant pleaded that he had paid it and taken a receipt for it.

The moonsiff decreed the claim without having examined two out of appellant's three witnesses, on the ground that the receipt was not filed, noticing at the same time that appellant's vakeel would not file it because he suspected it, and awaited the arrival of his client that the latter might file it himself.

Appellant urges, in appeal, that he had left the receipt with his vakeel, who ought to have filed it, and that being ill, he could not attend to do so himself: and he urges that he is entitled to have the evidence of his witnesses taken.

## JUDGMENT.

The above stated grounds of appeal appear to me good.

## IT IS THEREFORE ORDERED,

That the decision of the moonsiff be reversed, and the suit remanded for further investigation by the moonsiff, who, as he has irregularly suffered plaintiff to file a reply without holding pro-

ceedings under Sections 10 and 12, Regulation XXVI. of 1814, will hold fresh proceedings under that law. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to the remaining costs of appeal.

THE 15TH APRIL 1851.

No. 200 of 1850.

*Appeal from the decision of Baboo Gopeenath Moetro, Moonsiff of Soodharam, dated 23rd November 1850.*

Soanocollah and others, Appellants,

*versus*

Meher Alee and others, Respondents.

THE moonsiff's decree in this case is illegal, not having been drawn out in the mode prescribed by Section 3, Act XII. of 1843, which order that moonsiffs shall state in their decrees "the points to be decided, the decision thereon, and the reason for decision;" seeing that the moonsiff has merely stated that he does not interfere with the collector's decision, because from perusal of it, and the papers of the case, there appears to be no necessity for doing so—clearly the case must be remanded for a legal decision.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for decision with reference to the foregoing remarks. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to the remaining costs of appeal.

THE 16TH APRIL 1851.

No. 182 of 1850.

*Appeal from the decision of Baboo Nubkishen Sein, Moonsiff of Panchpookriah, dated 4th September 1850.*

Mirtunjae Surmah, Appellant,

*versus*

Kewulkishen Surmah and others, Respondents.

RESPONDENTS sued for possession of land, in reversal of a settlement made with the persons sued, and the moonsiff decreed the claim.

Appellant urges, among other matters, that, though an itelah-namah or notice was sent out for the attendance of the heirs of the late Bholanath Surmah, one of the persons sued, and they were not found; no proclamation was issued: and, as I find that this is a true statement, and it is obvious that whatever precautions are

taken to give notice of suit to persons sued, should be given to their asserted heirs, in case of their death; it is clear that the moonsiff's decree has been given prematurely and without the necessary preliminaries, and I must therefore remand the suit.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for re-trial with reference to the foregoing remarks. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to the remaining costs of appeal.

THE 16TH APRIL 1851.

No. 2 of 1851.

*Appeal from the decision of Baboo Gopeenath Moetro, Moonsiff of Soodharam, dated 3rd December 1850.*

Zeeavoodeen, Appellant,

*versus*

Kishenkaunt Dut, Respondent.

RESPONDENT sued under a bond for 100 rupees, dated 8th Poos 1247, executed by respondent in favor of Kaleekaunt Dut, respondent's son, who is now dead, and he claimed the principal sum lent, with an equal sum as interest.

Appellant filed an answer in which he pleads that Chur Oobuttee is farmed in partnership by himself and respondent; that it was necessary to pay Ramlochun Nag, mooktear, 200 rupees, the rent having fallen off; that respondent took a bond for 100 rupees, i. e., half the sum required in the name of his son, a minor, but did not deliver the money to the mooktear; that finally appellant paid the money and got the work done; that, on demanding return of the bond, respondent stated that it could not be found but gave a receipt in 1248; that respondent would not have delayed suing for ten years had his claim been true, and that, were respondent examined on oath, the circumstances of the case would be disclosed.

Respondent filed a reply, denying the pleas in the answer and having given receipt. He states that the money was paid to appellant by Rammanick, his (respondent's) gomashtha; and that the date and the month on which the receipt was written would have been stated, had it been true.

The moonsiff (Baboo Gopeenath Moetro) observes, in his decree, that respondent's claim is established by the bond and the evidence of Kurreemoodeen and Rampershad, witnesses, adduced by him; that the signatures of Rammanick on the receipt and letter filed by appellant cannot be taken in lieu of the signatures of respondent; that appellant had filed a list of witnesses, and had been fined, in



vain, twice, for not producing them, and he finally decreed the claim in respondent's favor.

Appellant now urges that, on applying for the return of the bond, Rammanick had first written a letter, and afterwards given a receipt, which he (appellant) filed on the 28th November; that the moonsiff decided the case within a week after, without taking the evidence of the persons cognizant of them, giving respondent a decree on the evidence of two low fellows under his influence; that respondent's son was a minor while respondent lived at Chittagong, and Rammanick managed his affairs; that respondent admits that the transaction of the loan was effected through Rammanick, and therefore the letter and receipt signed by Rammanick cannot be rejected; that the amount was founded on enmity; and that he was about to adduce the evidence after filing his documents, but had no time allowed him.

### JUDGMENT.

I cannot interfere in this case—the bond is admitted with pleas of no consideration having been given and a receipt having been granted by respondent, in cancelment of the bond, which respondent averred that he could not find. Instead of a receipt by respondent being filed, one is adduced bearing the name of Rammanick, from whom, on behalf of respondent, appellant is stated by the latter to have received the money 100 rupees; moreover, though appellant was required to adduce whatever evidence he might wish to offer on the 12th of June, and was twice fined for his neglect to produce it, he has not brought forward a single witness, though the suit was not decided before the 3rd of December last.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be affirmed, and the appeal dismissed, with costs.

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THE 16TH APRIL 1851.

No. 15 of 1851.

*Appeal from the decision of Baboo Goppeenath Moetro, Moonsiff of Soodharam, dated 17th December 1850.*

Musst. Oomah, Appellant,

*versus*

Musst. Radhamonjee, Respondent.

RESPONDENT sued for 41 rupees with interest under a bond, dated 15th Bhadoon 1252.

Appellant denied the transaction, and pleaded that she had no occasion for the money; that it would not have been lent her without security; that respondent brought her from Nusseerabad and

kept her for five or six years in slavery, as a prostitute; that she had lately quitted respondent's house, and that the suit was instituted to compel her to return.

The moonsiff (Baboo Goopeenath Moetro) held the claim proved by the abduction of the bond and the evidence of Summee chowkedar and Saber, subscribing witnesses to it; and observing that the plea about slavery does not affect the claim under a bond, and he accordingly decreed in respondent's favor.

Appellant now urges that out of the witnesses of respondent, *i. e.*, Summee chowkedar, Musst. Kuseelah and Saber is conflicting, for Kuseelah has deposed that respondent merely made a show of paying the money to appellant, and that Bishnoo Churn attached her name to the bond in the absence of Saber as Summee also says, while, in contradiction of them, Saber says he was present when the loan was advanced and signed his name, which will be found on the bond written in fresh ink, over instead of under the word *ishhad* where it ought to be, with the place of his residence in the handwriting of a different person from the signer of her name, and both parties named Bishnoo Churn Mujmoadar, the writer of the bond, and Musst. Sinda as witnesses; but that respondent was afraid of their evidence and would not produce them: and she adds that respondent formerly instituted a similar suit against another girl which was dismissed.

#### JUDGMENT.

Three witnesses, whose names are on the bond, have been examined in this case. Two adduced by respondent, Summee and Saber, have supported her claim, the third, Kuseela, adduced by appellant, has sworn the bond to a mere sham document, fabricated to prevent appellant from quitting respondent, who appears from the evidence of Summee to have been hamtaam with appellant at the time the bond was written. The witness Summee further is unable to say why the money was borrowed, but states that appellant quitted respondent in Chyte or Bysack, and the plaint shows that this suit was instituted on the 14th Bysack. Moreover, the signature of Saber has all appearance of being added recently, and not written at the time the bond was executed, as the evidence of Kuseela, directly, and of Summee, indirectly show that it was not. Under these circumstances I do not believe the claim to represent a *bond fide* transaction, but deem the bond fabricated, as appellant avers, to keep her in respondent's house.

#### IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the claim dismissed, with full costs; and that the moonsiff be required to furnish whatever explanation he may be able to give of his very discreditable decision.

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THE 16TH APRIL 1851.

No. 18 of 1851.

*Appeal from the decision of Mahomed Walee, Moonsiff of Begum-  
gunge, dated 18th December 1850.*

Mutteeoollah, Appellant,

*versus*

Choonee and Torab Alee, Respondents.

APPELLANT sued for rupees 94, 4 a., 4 p., 16 k.

Respondents filed an answer, resisting the claim with various pleas.

Afterwards Torab Alee filed a petition, setting forth that though he had filed an answer in denial of the claim, he had found it to be true, and had made a settlement with appellant agreeing to pay the latter 45 rupees, *i. e.*, 10 rupees in cash, 20 rupees in Maugh, and 15 rupees in Phalgon, and he prayed that a decree might be passed and his father exempted from liability.

The decision recorded by the moonsiff in his own handwriting sets forth that Choonee had filed a petition, stating that he had made a settlement, agreeing to pay appellant forty-five rupees, and that as appellant's vakeel had affixed his written assent to such arrangement, a decree is passed against Choonee, without any mention of Torab Alee or directions in regard to the costs. The decree, however, drawn up by the moonsiff's umlah, attributes the petition to Torab Alee and is passed against him. Clearly either the decree drawn up by the amlah at variance with the moonsiff's order in his own handwriting, or the order written by the moonsiff is an invalid document, and the suit must be remanded that these papers may be drawn up concordantly. The case must also be remanded, because I find that though the moonsiff has recorded that appellant's vakeel has affixed his written assent to the arrangement asserted to have been made, no such written assent is in existence. I shall therefore remand the suit in order that the moonsiff may require such evidence as appellant may wish to offer in support of his claim, and such testimony as respondents may wish to adduce either in disproof of it or in proof of the settlement alleged by Torab Alee.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded or re-trial with reference to the foregoing remarks. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to the remaining costs of appeal.

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## ZILLAH TIRHOOT.

THE HONORABLE ROBERT FORBES, JUDGE.

THE 9TH APRIL 1851.

No. 33 of 1850.

*Regular Appeal from a decision of Moulvee Itrut Hossein, Sudder Ameen of Mozufferpore, dated the 21st August 1850.*

Musst. Ilahee Buksh and two others, Appellants, out of four  
(Defendants,)

*versus*

Meer Tussuddook Hossein, (Plaintiff,) Respondent.

THE plaintiff, in this action, sought to recover from the appellants and one Musst. Piyaree Jan, (not present in appeal) the sum of Company's rupees 521-3-0, principal and interest, of a loan alleged to have been made by him to them as per bond, dated the 5th December 1848, or 24th Aughun 1256 F. S., with promise of liquidation of the loan in Poos of the same year.

The three defendants, who have appealed, pleaded that they neither wrote the bond nor borrowed the money, and that the suit had been trumped up by Moonshee Fuzul Huk, with whom their co-defendant Piyaree Jan lived, the persons whose names are mentioned in answer being aware of the latter circumstance.

The other defendant Piyaree Jan pleaded that she and the other defendants having repaid the amount borrowed had received back the bond, and that the claim was a false one set up at the instigation of unjust persons.

The sudder ameen, on perusal of the bond and the evidence of the witnesses named in it, considered the plaintiff's claim to be proved against all the defendants, and accordingly gave the plaintiff a decree.

It is urged in appeal that though the sudder ameen did certainly hold a proceeding under Section 10, Regulation XXVI. of 1814; but what issue or issues are required by that proceeding to be determined does not at all appear, and that their (appellants') proofs in refutation of their adversary's claim upon them were not called for. They also plead that the plaintiff's witnesses are creatures of his own.

## JUDGMENT.

The decision of the sudder ameen in this case is in effect *ex parte*, although the defendants appeared and answered.

It was pleaded for the defence that the case had been trumped up by a certain party named, other persons also named being mentioned as aware of that circumstance. Nevertheless the sudder ameen in his Section 10 proceeding, looking only to the plaintiff's claim, and taking no notice of the plea advanced in defence, called only for proofs from the former, but not from the latter.

Reversing, therefore, his decision, I remand the case to the sudder ameen to be re-tried, and the usual order will be passed for refunding the institution fee.

THE 9TH APRIL 1851.

No. 375 of 1850.

*Regular Appeal from a decision of Pundit Dataram, Moonsiff of Teighra, dated 15th July 1850.*

Baboo Juggernath Dutt and one other Appellants, (out of thirty-three Defendants,)

*versus*

Deo Moorut Punditain, grand-mother and guardian of Baboo Jyepercash Missr, son of Baboo Shampercash Missr, (Plaintiff,)  
Respondent.

SUIT to obtain possession and effect mutation of registry of a 1 anna share out of the 8 annas shares of mouzas Ismaelpore Gourah and Ruttunpore Gourah and Nyepore Gourah, principal and dependencies, paying revenue to Government, pergunnah Mulkee as per bill of sale, dated the 17th of Assin 1247 F. S. Action being laid at Company's rupees 192-1-9, viz., Company's rupees 28-15-6, being three times the sudder jumma, and Company's rupees 163-2-3, principal and interest of mesne profits from 1253 to 1256 F. S.

This and the eight appeals, which follow relating to the same cause of action, are brought on for hearing and decision together, the judgment recorded in this case, equally applying to all the rest.

Baboo Shampercash Missr, the father of the minor Jyepercash Missr, purchased from Jhotee Raee, a 6 annas share of the above mouzas by bill of sale, dated the 17th Sawun 1231 F. S., and another 6 annas by seven others, separate cowalehs of different dates from several other different persons and the plaintiff (respondent) remaining in possession until 1252 F. S., and having taken out attachment against two cultivators Belas Raee and Dilla Raee, instituted regular suits before the Teighra moonsiff to set aside the orders passed regarding the attachment, that against the former

having been decreed in his favor, and that against the latter dismissed on the ground of its not being proved; that the plaintiff had issued the prescribed proclamation, and these decisions were both upheld in appeal. In consequence of this the tenants in the above mouzas in 1253 F. S., being in collusion with Juggernath Dutt, (appellant) third party in the regular suit dismissed, ceased to pay their rents, and the sellers on the same plea ousted the plaintiff from the 6 annas sold him by the seven separate cowalehs of which they, (the sellers,) again took possession. The plaintiff therefore sues on six different cowalehs, and although the defendant Juggernath Dutt and others sued by way of precaution, have *ipso facto* nothing to do with this claim, yet on account of their names being recorded in the Government books, and mentioned in several decrees of court, she has therefore as a precautionary measure included them.

Out of the thirty-three persons sued as defendants, twenty-three did not defend the suit.

The defendant Belas Rae, (sued by way of precaution) pleaded, in his answer, that he has possession of a 1 anna share in the three mouzas and other lands which he purchased, and four of the original sellers hold each a 1 anna share, besides which giving in detail a specification of the shares of the different sharers, he urges that he has been unjustly made a party in the suit.

The answer of the defendants Musst. Kirtoo Koonwur and two others also sued by way of precaution, is in support of that of the preceding defendant Belas Rae in regard to the amount of shares.

The four defendants (sellers) denying the execution of any cowaleh also make answer in support of the statement of Belas Rae.

The answer of the defendant Baboo Juggernath Dutt, likewise sued by way of precaution, is that the plaintiff is guardian to one who has attained his majority, and as proofs have been filed after the lapse of six weeks, the suit ought to be struck off. He also pleads that besides purchasing the right and interest of Nahur Rae, he (defendant) bought 3 annas 9 pie share by separate bills of sale, and that the plaintiff concealing his (defendant's) purchase by the latter has only mentioned him in her plaint as the purchaser of the share of Nahur Rae, and that she has included Bheechok Rae and Jhootee Rae, who are her defendants in six suits among her witnesses in this and two other suits. Prior to this on occurrence of a dispute between the maliks of the three mouzas, 8 annas were definitively decided by the register on the 18th May 1814, on the strength of a koorseenamah or genealogical table to be the share of Hurree Rae, and 8 annas that of Bhowun Rae and others. Subsequently, Shamperkash Missr bought from Jhootee Rae, the son of Hurree Rae, 6 annas out of the 8 annas share of the latter, and the plaintiff suing on the plea of her having bought 6, out of the 8 annas share, has concealed the amount of the shares of

the sellers, and those whom she has also sued as a precautionary measure, as settled by the above koorseenamah and decision. If the plaintiff was, as she alleges, in possession of the 12 annas share till 1252 F. S., and was dispossessed of the 6 annas from 1253 F. S., why did she neglect to bring a suit in the foudarry court or under Act IV. of 1840, instead of instituting this one after the lapse of twelve years reckoning from the date of the bills of sale?

The answer of the defendant Jhootee Raee also sued by way of precaution, is in support of the plaintiff's allegations.

The moonsiff decreed the suit in the plaintiff's favor. A perusal of the former moonsiff's decision of the 11th September 1844, and two of the principal sudder ameen of the 1st August 1845, one of which upholds the moonsiff's judgment in appeal, made it clear to him that the plaintiff had a right to collect the rents from a 12 annas share, the dispute about possession of the 6 annas lastly purchased having arisen from the cultivators leaguings together, and after the suit against Dilla Raee had been dismissed. In two kubooleuts written by Kuggun Raee and Poorun Raee, two of the sellers, 12 annas are put down as the plaintiff's share, and accordingly the denial of the former is of no use. The village putwaree and several cultivators have deposed in proof of the possession of the plaintiff up to 1252 F. S., and from a conditional deed of sale dated 2nd September 1837, filed by the plaintiff, it is evident that this same Juggurnath Dutt conditionally bought from the father of Poorun Raee, one of the sellers, the share now under litigation. The koorseenamah given in by the defendant Juggurnath Dutt cannot be deemed authentic, inasmuch as it has not been filed in any court, besides which Juggurnath Dutt has not produced the register's decision and koorseenamah to which he has alluded. Now the cowaleh on which the plaintiff rests her case is registered, and has been attested by the evidence of the witnesses to it, and by the answer of the defendant Jhootee Raee, and the objection regarding the lapse of six weeks does not apply in any of these suits.

The chief grounds of appeal are that the plaintiffs making Bheechok Raee and Jhootee Raee, who were witnesses to the cowalehs in three of the suits defendants in six cases according to the precedent of the 15th August 1847, in the *Agra Gazette* of the 27th October of the same year, entitles them (appellants) to a non-suit. As to the ground of action, being dispossession, was the same, the suing separately is at variance with the Circular Order of the 30th September 1847, and in the decision cited by the plaintiff as her proof of having been ousted, leave was given her to institute a regular suit to establish her proprietary right without specifying either 12 or 6 annas. The reasoning too of the moonsiff in his decision regarding the judgment in the case of Dilla Raee, on which the plaintiff grounds her action, and which having been dismissed, bore upon this suit, as if it had been otherwise decided, and was

inapplicable and his accordingly defining shares, is contrary to justice. They (appellants) did ask for time to file the decision of the register and koorseenamah, but it was not allowed them.

#### JUDGMENT.

In this and the five suits, which as connected with each other, were tried by the moonsiff at the same time, and from which nine appeals have been preferred to this court, the investigation of the moonsiff is defective and unsatisfactory, because he has neglected to conform to the law which requires the particular point or points at issue between the parties to be determined, and distinctly stated in the proceedings specifically enjoined for that purpose.

The following are some of the points arising upon the pleadings which require determination.

*First.*—It was contended for the defence that the plaintiff's making defendants of some who were witnesses to, and who signed some of the bills of sale, and who should therefore have been adduced as witnesses, was improper.

*Secondly.*—It was also pleaded by one of the defendants, in his answer, that the plaintiff was guardian to one no longer a minor, but neither of these points was noticed or propounded for determination by the moonsiff.

Reversing, therefore, his decision in each of the cases, I remand them all to the moonsiff to be re-tried, and the customary order will issue for returning the institution fee. . .

THE 9TH APRIL 1851.

No. 371 of 1850.

*Regular Appeal from a decision of Pundit Datarām, Moonsiff of Teighra, dated 15th July 1850.*

Dilla Rae and four others, (Appellants,) out of thirty-three Defendants,

*versus*

Deo Moorut Punditain, grandmother and guardian of Baboo Jyeperkash Missr, minor son of Baboo Shamperkash Missr, (Plaintiff,) Respondent.

SUIT to obtain possession and effect mutation of registry of a 10 gundah share of mouzas Ismaelpore Gourah, Ruttunpore Gourah and Nyepore Gourah, principal and dependencies; pergunnah Mulkee, as per bill of sale, dated the 15th of Bysack 1250 F. S. Action being laid at Company's rupees 98-1-4, including mesne profits from 1253 to 1256 F. S.

#### JUDGMENT.

The decision recorded in the preceding appeal, No. 375, equally applies to this case. The order of the moonsiff is reversed, and the



case remanded for re-trial with the issue of the customary order for refunding the institution fee.

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THE 9TH APRIL 1851.

No. 372 of 1850.

*Regular Appeal from a decision of Pundit Dataram, Moonsiff of Tieghra, dated 15th July 1850.*

Baboo Juggurnath Dutt, (Appellant,) one out of thirty-three  
Defendants,

*versus*

Deo Moorut Punditain, grandmother and guardian of Baboo Jyeperkash Missr, son of Baboo Shamperkash Missr, (Plaintiff,) Respondent.

SUIT to obtain possession and effect mutation of registry of a 10 gundah share of mouzas Ismaelpore Gourah, Ruttunpore Gourah, and Nyepore Gourah, principal and dependencies, pergunnah Mulkee, as per bill of sale, dated the 15th of Bysack 1250 F. S. Action being laid at Company's rupees 96-1-4, including mesne profits from 1253 to 1256 F. S.

#### JUDGMENT.

The decision recorded in the appeal, No. 375, equally applies to this case. The order of the moonsiff is reversed, and the case remanded for re-trial with the issue of the customary order for refunding the institution fee.

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THE 9TH APRIL 1851.

No. 373 of 1850.

*Regular Appeal from a decision of Pundit Dataram, Moonsiff of Tieghra, dated 15th of July 1850.*

Baboo Juggurnath Dutt, (Appellant,) one out of thirty-three  
Defendants,

*versus*

Deo Moorut Punditain, grandmother and guardian of Baboo Jyeperkash Missr, son of Baboo Shamperkash Missr, (Plaintiff,) Respondent.

SUIT to obtain possession and effect mutation of registry of a 1 anna 6 pie share of mouzas Ismaelpore Gourah, Ruttunpore Gourah and Nyepore Gourah, principal and dependencies, pergunnah Mulkee, as per bill of sale, dated 30th of Assin 1241 F. S. Action being laid at Company's rupees 290-5-8, including mesne profits from 1253 to 1256 F. S.

## JUDGMENT.

The decision recorded in the appeal, No. 375, equally applies to this case. The order of the moonsiff is reversed, and the case remanded for re-trial with the issue of the customary order for refunding the institution fee.

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THE 9TH APRIL 1851.

No. 374 of 1850.

*Regular Appeal from a decision of Pundit Dataram, Moonsiff of Teighra, dated 15th July 1850.*

Baboo Juggurnath Dutt, (Appellant,) one out of thirty-three Defendants,

*versus*

Deo Moorut Punditain, grandmother and guardian of Baboo Jyeperkash Missr, son of Baboo Shamperkash Missr, (Plaintiff,) Respondent.

SUIT to obtain possession and effect mutation of registry of something more than a 16 gundah 3 dunt share of mouzas Ismaelpore Gourah, Ruttunpore Gourah and Nyepore Gourah, as per bill of sale, dated the 8th of Jyte 1242 F. S. Action being laid at Company's rupees 159-5-0, including mesne profits from 1253 to 1256 F. S.

## JUDGMENT.

The decision recorded in the appeal, No. 375, equally applies to this case. The order of the moonsiff is reversed, and the case remanded for re-trial with the issue of the customary order for refunding the institution fee.

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THE 9TH APRIL 1851.

No. 376 of 1850.

*Regular Appeal from a decision of Pundit Dataram, Moonsiff of Teighra, dated 15th July 1850.*

Baboo Juggurnath Dutt, (Appellant,) one out of thirty-three Defendants,

*versus*

Deo Moorut Punditain, grandmother and guardian of Baboo Jyeperkash Missr, son of Baboo Shamperkash Missr, (Plaintiff,) Respondent.

SUIT to obtain possession and effect mutation of registry of a 1 anna share of mouzas Ismaelpore Gourah, Ruttunpore Gourah and Nyepore Gourah, principal and dependencies, pergunnah Mulkee, as per bill of sale, dated the 1st of Kartick 1241 F. S. Action being

laid at Company's rupees 192-1-9, including mesne profits from 1253 to 1256 F. S.

### JUDGMENT.

The decision recorded in the appeal, No. 375, equally applies to this case. The order of the moonsiff is reversed, and the case remanded for re-trial with the issue of the customary order for refunding the institution fee.

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THE 9TH APRIL 1851.

No. 377 of 1850.

*Regular Appeal from a decision of Pundit Dataram, Moonsiff of Teighra, dated 15th July 1850.*

Oomun Rae and seven others, (Appellants,) out of thirty-three Defendants,

*versus*

Deo Moorut Punditain, grandmother and guardian of Baboo Jyeperkash Missr, son of Baboo Shamperkash Missr, and two others, (out of the Defendants,) Respondents.

SUIT to obtain possession and effect mutation of registry of something more than a 16 gundah 3 dunt share of mouzas Ismaelpore Gourah, Ruttunpore Gourah and Nyepore Gourah, as per bill of sale, dated the 8th of Jyte 1242 F. S. Action being laid at Company's rupees 159-5, including mesne profits from 1253 to 1256 F. S.

### JUDGMENT.

The decision recorded in the appeal, No. 375, equally applies to this case. The order of the moonsiff is reversed, and the case remanded for re-trial with the issue of the customary order for refunding the institution fee.

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THE 9TH APRIL 1851.

No. 378 of 1850.

*Regular Appeal from a decision of Pundit Dataram, Moonsiff of Teighra, dated 15th July 1850.*

Baboo Juggurnath Dutt and another, (Appellants,) out of thirty-three Defendants,

*versus*

Deo Moorut Punditain, grandmother and guardian of Baboo Jyeperkash Missr, son of Baboo Shamperkash Missr, (Plaintiff,) Respondent.

SUIT to obtain possession and effect mutation of registry of a 4 gundah share of mouzas Ismaelpore Gourah, Ruttunpore Gourah

and Nyepore Gourah, principal and dependencies, pergunnah Mulkee, as per bill of sale, dated the 27th of Jyete 1241 F. S. Action being laid at Company's rupees 40-12, including mesne profits from 1253 to 1256 F. S.

#### JUDGMENT.

The decision recorded in the appeal, No. 375, equally applies to this case. The order of the moonsiff is reversed, and the case remanded for re-trial with the issue of the customary order for refunding the institution fee.

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THE 9TH APRIL 1851.

No. 379 of 1850.

*Regular Appeal from a decision of Pundit Dataram, Moonsiff of Teighra, dated 15th July 1850.*

Oomrao Rae and another, (Appellants,) out of thirty-three  
Defendants,

*versus*

Deo Moorut Punditain, grandmother and guardian of Baboo Jyeperkash Missr, son of Baboo Shamperkash Missr, (Plaintiff,) Respondent.

Suit to obtain possession and effect mutation of registry of a 4 gundah share of mouzas Ismaelpore Gourah, Ruttunpore Gourah and Nyepore Gourah, principal and dependencies, pergunnah Mulkee, as per bill of sale, dated the 27th of Jyete 1241 F. S. Action being laid at Company's rupees 40-12, including mesne profits from 1253 to 1256 F. S.

#### JUDGMENT.

The decision recorded in the appeal, No. 375, equally applies to this case. The order of the moonsiff is reversed, and the case remanded for re-trial with the issue of the customary order for refunding the institution fee.

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THE 16TH APRIL 1851.

No. 19 of 1850.

*Regular Appeal from a decision of Moulvee Ashruf Hossein Khan Bahadur, Officiating 2nd Principal Sudder Ameen, dated 3rd July 1850.*

Baboo Sheopersun Singh, (Appellant,) out of fifty-five Defendants,

*versus*

Lall Beharee Singh and four others, (Plaintiffs,) Respondents.

THE plaintiffs, five in number, as joint shareholders of 15 gundahs, 1 cowree of mouza Poosapore, pergunnah Ruttee, sued fifty-five persons as defendants, among whom was the present appellant as security.

Two mooktears and fifty-two others, the plaintiff's co-sharers, to recover Company's rupees 1118-1-0, as principal and interest of surplus sale proceeds after the whole mouza in question was sold for arrears of Government revenue on the 16th October 1837, the money sought to be recovered having, as alleged by the plaintiffs, been drawn out of the collectorate by the shareholding defendants through the two mooktears, and on the security of Baboo Sheopursun Singh, the present appellant.

On the 26th March 1846, the late officiating 2nd principal sudder ameen, who tried the case, passed a decree in favor of the plaintiffs against all the defendants jointly, from which decision two appeals were separately preferred, one by the surety, Baboo Sheopursun Singh, the present appellant, and the other by one of the mooktears and three of the shareholder defendants, and these appeals having been heard by the additional judge, the decision of the principal sudder ameen was upset, and the case remanded for re-trial for several reasons recorded in the additional judge's judgment of the 21st July 1848, especially with advertence to the lower court's decision being opposed to Construction No. 840 in its not determining the separate liability of each defendant. The particulars of the suit and the judgment recorded by the appellate court, will be found at page 172 of the zillah decisions for July 1848.

On the case being remanded the principal sudder ameen exonerating from responsibility all, except fifteen of the defendants, viz., the surety, now appellant, one mooktear and thirteen shareholders, passed a decree in plaintiff's favor against them rateably with reference to what they were proved to have received.

From this decision Baboo Sheopursun Singh, the security, has alone appealed, and the main grounds of his dissatisfaction with the decision of the principal sudder ameen are that he (appellant) is not liable by the terms of his security bond. By the conditions of that instrument his responsibility is to the Government, and as the latter has laid no claim against him, he is not to be held accountable for the malik's misappropriations. It was no stipulation in his security bond that he should make good money misappropriated by those who had received it.

#### JUDGMENT.

The decision of the late officiating 2nd principal sudder ameen, who tried and disposed of this suit is incomplete; *first*, because he has failed to record the reasons of his judgment in detail as required by Act XII. of 1843; and *secondly*, because though enjoined to do so by the appellate court who remanded the suit for re-trial, he has pronounced no opinion as to the legal liability, or otherwise, of the surety with reference to the tenor and conditions of his security bond, which was clearly the material issue for determination as far as the surety was concerned.

In so far, therefore, as it affects the surety, (appellant) reversing the principal sudder ameen's decision, I remand the suit to him for re-trial, with the usual order for refunding the value of stamp paper.

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THE 28TH APRIL 1851.

No. 20 of 1850.

*Regular Appeal from a decision of Ephraim DaCosta, Esq., first Principal Sudder Ameen, dated 29th August 1850.*

Musst. Luchmin, (Appellant,) out of five Defendants,

*versus*

Ram Unooj Dass *alias* Madhoo Dass, (Plaintiff,) Respondent.

SUIT to be maintained in possession and to effect mutation of registry with reversal of sale made in execution of a decree of mouzas chuck Deendyal and chuck Rufeek in mouza Phoolerah Ishak, pergunnah Hajepore. Action being laid at Company's rupees 61-8-9.

The plaint alleges that the two chuks abovenamed were given as an endowment by one Munsharam, for the support of the idol and the feeding of parties frequenting a thakoorbaree in the Helah bazaar, in the town of Hajepore, to Nursingh Acharee, who was succeeded on his death by his chela, or disciple, Kishen Acharee, the latter, who was the plaintiff's gooroo, or spiritual guide, having died in Sawun 1249 F. S., previous to which event he (plaintiff) had gone on pilgrimage, but returning in Chyte 1253 F. S. to Hajepore, he was placed on the guddee, and succeeded to the rights and possessions left by his deceased gooroo. Subsequently one Sheolall Doobey having got Musst. Luchmin, the appellant, who was living as it were in marriage with Kishen Acharee, the plaintiff's gooroo, and after his death went to live with some other man, to write a bond for 50 rupees, filed a suit and having got a decree on the 15th September 1840, caused the two chucks under litigation to be sold in execution on the 5th July 1847, and himself in partnership with one Ram Dhon Shookool became the purchaser. On this Meetaram and others, the heirs of Munsharam, sued to have the sale reversed; but the plaintiff having come forward as third party, the suit was dismissed on the 4th July 1838, without however his (plaintiff's) rights being made the subject of enquiry. Agreeably to the shasters the property left by a gooroo, or religious instructor, belongs to his chela, or disciple, and property given as an endowment cannot be alienated or liable for such a loan as that made to Musst. Luchmin. Besides which the sale took place before the expiry of the notice prescribed by law.

The defendant, Musst. Luchmin, pleaded that in the action brought by Meetaram and others, the property in dispute was prov-

ed to belong to her (defendant's) husband, and the said Meetaram and others having got the plaintiff to institute this suit and themselves preferred an appeal in that in which they were cast by the decision of the 14th January 1848, got both suits as relating to each other to be tried together. Had the plaintiff been really guddee nusheen in 1253 F. S., he would unquestionably have come forward as objector when the property was advertized for sale. On the death of the fukeers of the *Oodasee* tribe, their chelas, or disciples, succeed them, while in the case of those of the Girehbasee sect their own begotten issue, or failing them their nearest relation succeeds as heir. Accordingly, after the death of Nursing Acharee, Kishun Acharee, her (defendant's) husband, who was Nursing's sister's grandson, succeeded to the guddee. If the plaintiff had really been the disciple of her husband, Kishun Acharee, he (plaintiff) would assuredly not have made use of the disgraceful expression he has applied to her, she being a widow and a purdah nusheen.

Three others of the defendants, Sheolall Doobey, Ramdhon Shookool and Muddun Mohun Shookool, made answer in support of the statement of Musst. Luchmin, adding that after the death of Kishun Acharee in 1252 F. S., a *verasatnamah*, or deed of heirship, on the part of Musst. Luchmin was filed in the collectorate without any objection on the part of the plaintiff, and in regard to the regularity of the sale they (defendants) rest their defence on their answer in the suit of Meetaram.

Musst. Indrawuttee and Muddun Mohun Shookool, the heirs of Jugmohun Shookool, who died after the institution of the suit, pleaded having nothing to do with the matter.

The decision of the principal sudder ameen was a decree in favor of the plaintiff. He was of opinion that the decision in the suit tried by the moonsiff offered no bar to the hearing of this suit, because the plaintiff in this was no party to that suit, the judgment in which had but just before been reversed. The name of Madhoo Das as chela of Kishun Acharee, is found in two documents filed by the plaintiff, one a will dated the 6th of May 1823, and the other a bill of sale of the 16th May 1845, and as regards the statement of Musst. Luchmin to the effect that Nursing Acharee was of the Girehbasee sect, and therefore could have no chela and of her plea of being in possession as her husband's heir, no proof, either oral or documentary, has been adduced to the satisfaction of the court. Agreeably to the shasters as laid down in Macnaghten's Hindu Law, chap. III., page 101, it is clear that among the byragee tribe, to which class the plaintiff belongs, the property left by a byragee gooroo goes to his chela, or disciple, and the heirs of Munsharam, who, founded the thakoorbaree in question, corroborate the plaintiff's statement. Moreover, wukf property cannot be sold, for proof of which vide Construction

No. 1166, and several decisions cited as precedents, as well as Macnaghten's Hindu Law, vol. II., chap. XIII., page 305, and accordingly as no one in the capacity of manager, that is to say, as poojaree, or priest, had any proprietary right in this endowment. What title could Musst. Luchmin have in it that it should be sold in satisfaction of her debt? besides which the sale was held after seventeen instead of thirty days from the date of the mofussil istehar.

The chief grounds of appeal are that the circumstance of the principal sudder ameen having, in his decision, which reversed that of the moonsiff in the case of Mectaram and others, nonsuited the plaintiff's original claim, affords no proof that the arguments adduced regarding the fabrication of the documents on which the plaintiffs rested their claim both in that and in this suit, have been invalidated. The will too of which the principal sudder ameen makes mention, was for devising the household property of Jankee Dass at Patna to Madhoo Dass, the chela of Kishun Acharee, from which it would appear that the Madhoo Dass therein mentioned is another person, because the plaintiff calls himself Ram Unooj Dass *alias* Madhoo Dass, which is also the wording of the bill of sale, which transfers mouzah Afzulpore, &c., to Madhoo Dass, the chela of Kishun Acharee, the priest of the temple at Patna, but presently residing in Serryagunge, from which, however, it does not appear that the purchaser was Ram Unooj Dass *alias* Madhoo Dass, residing at Hela bazaar, in the town of Hajepore; that he is a byragee, who has neither wife nor children, while a Brahmin Acharee is one who has. Moreover, the statement of the plaintiff is that he was on pilgrimage until Chyte 1253 F. S., if so, how could he have got the bill of sale, which is dated the 16th May 1845, corresponding with the Fuslee year of 1252? The principal sudder ameen has neither perused nor alluded in his decision to the proofs which she (appellant) has filed of her being in possession, viz., dakhilas, koorkee fysilah and foudjarry proceedings, &c. Since the endowment was made by Lalla Bungsee Singh, the land has been frequently resumed by Government, and re-leased to Nursing Acharee, settlement having been eventually made with her (appellant's) husband Kishun Acharee, without Meetaram and others whose dependant, the plaintiff appears to be having ever objected. After her verastnamah had been filed in the collectorate, an istehar was issued, and one Ramjewun Sahoo kutkinadar, in virtue of the lease given by her, having taken out attachment against a ryot got an order passed in his (the kutkinadar's) favor; but the plaintiff never once objected. By what proof the court of first instance has ascertained that Kishun Acharee was a byragee fukeer of the Oodasee sect, does not appear. The fact is that, first, Nursing Acharee, and after him Musst. Jankee, and after her, Kishun Acharee, her (appellant's) husband, has been in possession, from which



it appears that before this on the failure of sons a woman has been in possession, and in the same way she (appellant) is in possession. Neither Meetaram and others, nor the plaintiff have disproved the pottah and koorkee fysicalah, and therefore, agreeably to Section 6, Regulation VIII. of 1831, and Construction No. 1028, after the lapse of one year they have become final.

#### JUDGMENT.

The point appearing to require adjudication in this appeal is, whether the conclusion at which the court of first instance has arrived of the plaintiff (respondent) being a byragee, of the Oodasee tribe, has been established by proof, or rests merely on conjecture, for, on the determination of that point hinges the soundness or otherwise of the reasoning and arguments adduced by the principal sudder ameen, and the applicability or otherwise of the particular doctrines of Hindoo law which he has cited.

The plaintiff calling himself, in his plaint, the chela, or disciple of Kishun Acharee, his gooroo, or spiritual guide, would make himself out, though he does not plainly represent himself a byragee, while the defendant, who is of the Brahmin Acharee class and of the sect of Girehbasee or householder, not apparently any where denied, but from his use of the expression munsoob as applied to the female defendant (appellant) rather admitted by the plaintiff, pleads that the latter has no connection or relationship with her family, or the thakoorbaree in Hajeepore. Each party thus represents himself to be of a different caste from the other, though at the same time both acknowledge Nursing Acharee as their common ancestor, the *onus probandi* then of his being a byragee according to the tenor of his plaint rests with the plaintiff. I do not, however, find though the matter was made an issue for determination by the principal sudder ameen in his Section 10 proceeding, that any proof or evidence has been taken or recorded on that point. As so much depends in the investigation of this case on the settlement of the point in question, I am constrained to send back the suit to the court of first instance.

Reversing, therefore, the decision of the principal sudder ameen, I remand the case to be re-tried with advertence to the preceding remarks, and the usual order will issue for returning the institution fee.

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PRESENT: W. ST. QUINTIN, ESQ., ADDITIONAL JUDGE.

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THE 1ST APRIL 1851.

No. 7 of 1844.

*Appeal against a decree passed by Syud Salamut Alli Khan, late  
Sudder Ameen of Tirhoot, on the 28th November 1843.*

Jokhund Rawut and six others, (Plaintiffs,) Appellants,

*versus*

Oomrao Rawut, vendor, and Bunsee Singh and three others, vendors,  
(Defendants,) Respondents.

The particulars of this case will be traced by a reference to page 356 of the Sudder Dewanny Adawlut Decisions of July 1850.

The points now to be decided are whether the claim of pre-emption was duly performed, and the affirmation by witnesses consequent thereon.

#### JUDGMENT.

To the first point there is no evidence at all, and to the second there is the evidence of a gowallah and two cultivators, who are not able to speak to the date on which the news of this sale reached the appellant, nor can they speak precisely as to the amount of rupees taken by the appellant to the house of the purchasers, nor to the parties present, when the appellant alleges that he claimed from them a right of pre-emption, I therefore uphold this decree, and dismiss the appeal, with costs.

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THE 2ND APRIL 1851.

No. 16 of 1849.

*Appeal against a decree passed by Moulvee Neamut Alli Khan, late  
Principal Sudder Ameen, on 15th January 1849.*

Mohunt Ball Mukhun Dass, (Plaintiff,) Appellant,

*versus*

Bugwant Naraen Jha and two others, heirs of Manick Nund Jha, farmer, and Lall Jha and two others, heirs of Bholanath Jha, surety, and Shumarun Dass and Urghun Dass, heirs of Jyram Dass, (Defendants,) Respondents.

THIS suit was instituted on 30th June 1842, to recover the sum of rupees 2961, 10 annas, 8 pie, being the amount principal and interest, of balances of rent accruing from 1239 up to 1249 Fusly, on a farm of 51 beegahs of fukeeranah lands, appertaining to mouza Chichirobah.

The plaint sets forth that Mohunt Beekun Dass, according to the custom of his sect in his lifetime, adopted the plaintiff as his heir,

and put him in possession of his estates under a hibbehnamah, dated 5th Bhadoon 1248 F. S. That 51 beegahs of land were leased to Manick Nund Jha, on the security of Bholanath Jha, at an annual rent of 153 rupees from 1236 up to 1245 Fusly, under a bond dated 21st Assin 1236 Fusly; that the rents were duly paid from 1236 up to 1238; that since the death of the farmer his heirs have refused to pay, hence the present action.

The defendants, the heirs of the farmer and his surety, in reply, plead that these lands never belonged to mohunt Beekun Dass, nor were they leased by him to their ancestor; that the lands for which this rent is claimed are the rent-free holding of Jyram Dass; that the mohunt distrained the crops on this land for balances for 1243 Fusly, and they were re-leased on their petition as a third party; that the collector subsequently made the case over to the moonsiff of Koelee, who dismissed the case, on the ground that the lands in dispute were the rent-free holding of Jyram Dass.

The defendants, the heirs of Jyram Dass, who were made defendants on a supplemental petition, reply that these lands are theirs by right of sunnud, and that although formerly a dispute for these lands was settled by sooloonamah between the mohunt and Jyram Dass, yet the mohunt has never had possession nor enjoyed the usufruct of the lands.

On the 9th December 1843, the then principal sudder ameen dismissed the plaint, being of opinion that the lease from the plaintiff to the defendants was not proved, and that as proprietary rights are at issue in the case, a suit for rents cannot be sustained.

This decree was reversed in appeal before the additional judge on the 17th May 1845, because a decree of the register dated 15th August 1828, rules the proprietorship of these lands to the mohunt Beekun Dass, and by his hibbehnamah again it becomes the right of the plaintiffs. The principal sudder ameen was directed to take evidence to establish the validity of the hibbehnamah, and to call on the collector to furnish the original farming agreement between the mohunt and Manick Nund Jha, and his surety Bholahnath Jha, copy of which had been filed by the plaintiff.

On the 22nd September 1845, the then principal sudder ameen struck the suit off his file under Act XXIX. of 1841. This order again was reversed in summary appeal, and a decree on the merits directed on 25th November 1846.

In the present instance the principal sudder ameen again dismisses the plaint, because the farming kubooleut in original is not forthcoming, and the defendants have proved their possession by oral and documentary evidence.

In appeal the plaintiff urges that the decree of the register dated 15th August 1828, establishes the proprietary right of the mohunt in the lands in question; that Jyram Dass was only the agent of the mohunt, and that the principal sudder ameen has overlooked the

fact; that the additional judge, in returning the suit for re-trial, records his opinion that the right of the mohunt is established. Notice was issued on the respondents on the 31st January, and their replies are in support of the decree passed in their favor.

The points to be decided in appeal are, first, the right of the appellant to the usufruct of these lands; secondly, who is liable to make it good to him.

#### JUDGMENT.

The register's decree of the 25th August 1828, rules only a proprietary *influence* to the appellant, but leaves Jyram Dass, the opposite party, in possession, binding him not to alienate the property. Thus the appellant has no claim to the rents of the land, and even if he had, he fails entirely to prove that these lands were farmed by Beekun Dass to Manick Nund Jha on the security of Bholanath Jha. I therefore uphold this decree, and dismiss the appeal, with costs on appellant.

THE 3RD APRIL 1851.

No. 24 of 1849.

*Appeal against a decree passed by Moulvee Mahomed Mohamid Khan, late 2nd Principal Sudder Ameen, on 28th December 1847.*

Hossein Buksh, (Plaintiff,) Appellant,

*versus*

Musst. Beebee Misryn, widow, and Musst. Beechan, daughter and heiress of Sheikh Meer Alli and thirteen others, 1st party, and Beejah Takoor and forty-four others, in thirteen parties, (Defendants,) Respondents.

THIS suit was instituted on 2nd March 1842, to recover possession and for mutation of names as proprietors, and to define and divide the jumma and lands in a 7 as. 6 gs. 2 d. share in each of the villages of chuck Massee, Narainpoor Massee and Rampore Massee, and for 6 as. of Nizamut Mussom Nuggur, and for 3 as. 3 p. 4 g. 1 c. of Jageer Mussom Nuggur, recently settled and for mesne profits from date of dispossession. Value of suit rupees 1158, 13 annas, 3 pie.

The plaint sets forth that the estate now claimed is the plaintiff's by right of inheritance from his father and mother.

The first objection of the principal defendants is, that the plaintiff does not specify the date of his dispossession nor does he name the deceased and existing shareholders.

O. the 26th December 1843, Moulvee Syud Ashruff Hossein, the then principal sudder ameen, decreed a portion of the claim to the plaintiff. This decree was reversed in appeal by the then additional judge on the 24th June 1846, for reasons recorded by

him and printed at pages 43, 44, 45, 46, 47, and 48 of the decisions of the zillah courts for that month.

In this instance the second principal sudder ameen dismisses the claim *in toto*, as he considers that the plaintiff fails to prove that he has any ancestral right or title remaining in the estate.

In appeal, the plaintiff urges his former pleas, and declares his suit to be based on a decree, dated 21st January 1818, and the execution of decree proceedings in that case on the 4th December 1849, notice was issued on respondents by the judge; the first party reply and support the decree passed in their favor.

The point to be decided in appeal, is whether or no the investigation of the lower court in this case is regular and complete.

#### JUDGMENT.

This is a suit to recover possession and mesne profits from date of dispossession. The first objection urged by the defendants in the suit is that the plaintiff has failed to specify the date of his dispossession, an irregularity neither explained nor rectified by the plaintiff, and is an objection which appears to me to contain the most important point in the case, and has not been noticed by any of the judges who has passed decisions in the case. I am, therefore, obliged to declare the investigation of the lower court to be incomplete till this objection is adjudicated on and to reverse the decree, and direct a re-investigation as indicated above, and the usual order is passed for a refund of stamps value to the appellant.

THE 3RD APRIL 1851.

No. 5 of 1849.

*Appeal against a decree passed by Moulvee Neamut Alli Khan, late Principal Sudder Ameen, on 14th December 1848.*

Mr. Brown, agent for Mr. Braddon, in the place of Mr. R. Tayler, deceased, (Plaintiff,) Appellant,

*versus*

Hurreram Jha, then Gudah Jha, (Defendant,) Respondent.

THIS suit was instituted on the 18th April 1844, to recover the sum of 237 rupees 7½ pie, being the amount principal and interest of rent balances accruing in 1244, 1245, and 1246 Fuslees, for cultivation in the village Kurryan.

The plaintiff states himself to be the farmer of this village, and that the defendant cultivated in the farm during the years specified above, and fell into balances to the amount now claimed.

The defendant, in reply, pleads, that he cultivated on the farm of the plaintiff jointly with his father and uncle against whom the plaintiff has preferred a separate action, and has omitted to make him a defendant; that he had no separate cultivation in the farm of

the plaintiff; that he cultivates is the burmooter lands of the village, as well as in the Zerat, of Musst. Mannah Kooer, one of the proprietors.

The principal sudder ameen dismisses the suit for the reasons given in the suit of the plaintiff *versus* the father and uncles of the defendant. He considers that the claim is founded on the evidence of the putwarry, who only took service in 1249, and cannot therefore depose to the balances of former years; that there is no proof that the lands for which these rents are claimed are distinct from the lands in the former suit; that the defendant does not cultivate as he alleges.

In appeal, the plaintiff urges that his putwarry was well acquainted with the accounts of his predecessor, and that the lower court ought to have enquired, whether the lands, for which this balance is claimed, are distinct or not from the lands involved in the former suit.

The point to be disposed of in appeal is whether or no the appellant makes good his claim for these balances against the respondent.

#### JUDGMENT.

There is no written specific agreement between these parties, and the only evidence the appellant is able to produce to support his claim is the deposition of the village accountant and some of the cultivators.

The putwarry admits that he took service in 1249, and that the account on which this claim is based was made over to him unsigned by the former accountant. I, therefore, agree with the principal sudder ameen in opinion that the appellant does not prove his claim and confirm the decree, and dismiss the appeal, with costs.

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THE 8TH APRIL 1851.

No. 73 of 1849.

*Appeal against a decree passed by Syud Mahomed Mohamid Khan, late 2nd Principal Sudder Ameen, on 25th August 1849.*

Musst. Beebee Zeenut and eight others, and Chowdree Geenah Singh, (Plaintiffs,) Appellants,

*versus*

The Government first; Lalljee Sah second; Ukbur Ali Khan and Ikbar Ali Khan third; Sheo Nundun Lall fourth party, (Defendants,) Respondents.

THIS suit was instituted on the 4th July 1848, for possession and mutation of names as the proprietors in  $9\frac{1}{2}$  annas of mouza Burhettah Oodakur *alias* Buskutteah,  $8\frac{1}{2}$  annas in mouza Peeruk-

pore and Kulleempore, and to set aside an auction sale held on 5th July 1847, and to recover the sum of rupees 432, 13 as., as mesne profits, accruing from date of sale up to 1255 Fusly. Suit valued at rupees 1901, 5 annas, 6 pie.

The plaint sets forth that the plaintiffs were proprietors in these estates as above stated, and the other shares belonged to Ikbar Ali Khan, third party of defendants; that the Government revenue for the estate was always paid in by their banker Lalljee, defendant, second party; that the estates were advertised for sale on the 7th June 1847, for a balance of rupees 106, on account of a 13 annas kist of 1254; that out of this the plaintiffs paid into the bank of Lalljee rupees 46, and the balance of the Government balances was due from Ukbar Ali Khan, which it was promised should be made good; that five days previous to the date fixed for the sale, the collector called upon the proprietors to pay up a 15 anna instalment; that Ukbar Ali Khan failed to pay; that the agent of the plaintiffs took the whole of the 13 anna kist balance, which was refused by the banker, and not credited to them by Sheonundun Lall, the collectory treasurer; that after this several of the malgoozars of the district objected to pay the 15 anna instalment, and the collector was eventually ordered to content himself with realizing the 13 anna instalment; that on the 5th July, several malgoezars paid up the 13 anna kist; that on hearing this, the agent of the plaintiff took the 15 anna kist, balances to the collector; when the collector ordered that as the 13 anna kist balances were not paid up on the 7th June, they could not be accepted, and the estate was sold at auction in consequence on that date; that Lalljee banker bought them for Ukbar Ali Khan; that the plaintiffs appealed against the sale, without success, both to the commissioner of revenue and the board, hence the present action, as the collector was not justified in refusing to receive the payment of their balances whilst he accepted those of other malgoezars. The Government reply to this is, that the proceeding in the revenue department shows that a balance of rupees 158, 3 annas was due from this estate, accruing from the kist of Cheyt, up to Jyte 1254, and that it was incumbent on the plaintiffs to pay the whole; that the Government was entitled to demand a 15 anna instalment prior to this sale; that the plaintiff declares that their banker withheld payment so that the treasurer was not in fault; that they tendered payment of rupees 106 only on the day of sale; that the plea of a fictitious sale is not cognizable.

The defendant, Lalljee Sah, who purchased the estate at auction, pleads that the sale was regular, and was bought on his own account, and that he is not banker to the plaintiffs.

The defendants, Ukbar Ali and Ikbar Ali, plead that it was in consequence of the default of the plaintiffs that the estate was sold.

The treasurer of the collector's office, the fourth defendant, does not defend the suit.

The second principal sudder ameen considers that the auction sale was regular; that a balance of rupees 158, 3 as., was due from the estate, and the plaintiffs only tendered payment of rupees 106, and that the plea that other malgoozars similarly situated with the plaintiffs were allowed to pay their balances does not effect their case, the suit is therefore dismissed.

The plaintiffs, in appeal, urge their original pleas.

The point to be decided in appeal is the validity or otherwise of the sale of this estate by the collector on the 5th July 1847.

#### JUDGMENT.

I can find no irregularity in this sale, which has been declared to be regular by the commissioner of revenue and the board, before it was brought into the civil court.

The pleadings of the appellants are tantamount to the acknowledgment that the estate, an undivided one, *was* in arrears, and that they only tendered payment of a *portion* of these balances, even supposing the real balance due to have been 13 annas kist, it was due in June, and payment was not tendered till July. The sale cannot be disturbed. I therefore uphold the decree, and dismiss the appeal, without issuing notices on respondents.

THE 8TH APRIL 1851.

Nos. 40 and 42 of 1849.

*Appeals against a decree passed by Moulvee Neamut Alli Khan, late Principal Sudder Ameen, on 29th March 1849.*

No. 40—Musst. Rajmun Chowdrine, mother and guardian of Ram Zallim Sing, minor son of Hunnoman Dutt Chowdhry, deceased, (Defendant,) Appellant,

No. 42—Isree Dutt Rai, (Defendant,) Appellant, in the suit of Bugwant Nuraen Jha and two others, sons of Mani Nund Jha, deceased, Laljha and three others, sons of Bolanath Jha, (Plaintiffs,) Respondents,

*versus*

The Appellants and Hurnath Chowdhry and Teeluckdharee Chowdhry, (vendors) Defendants.

THIS suit was instituted on 3rd December 1847, for possession and mutation of names as proprietors of two annas out of 4 annas of mouza Bhamoo, to recover mesne profits, amounting, principal and interest, to rupees 1255, 11 as., and accruing from 1245 up to 1254 Fusly. Suit valued at rupees 1577-9.

The plaint is that the defendants, Hurnath Chowdhry and Teeluckdharee Chowdhry, made a conditional sale of this estate to the ances-



tors of Bolanath Jha and Manick Jha under a deed dated 19th Aughun 1243; that the sale was made absolute on 31st January 1838, and this action is brought for possession consequent thereon.

The vendors do not defend the case.

The two appellants petitioned as third parties in the suit, and were made defendants on a supplemental petition filed by the plaintiff.

The defendant Musst. Rajmun pleads that prior to this alleged sale the plaintiffs Hurnath Chowdry had made an out-and-out sale of this two anna share in Dahmoo with other property to one Bojraj Takoor; that in the suit Futteh Chund Saho *versus* Bojraj and Hurnath, the sale was reversed, and this share was brought to sale in execution of decree; that at the time of sale Hurnath sold the share to Hunnoman Dutt, the husband of Rajmun, under a deed of sale dated 18th January 1844; that this was represented to the collector and a cash payment made in satisfaction of the decree; that after this Bahadoor Chowdry and others sued for a right of pre-emption and were defeated; that the plaintiffs have never urged objections; that as the deed of sale to the plaint is dated more than 12 years back, this action is barred by the statute of limitations.

The defendant Ishree Dutt pleads, in reply, that he made an out-and-out purchase of 13 g. 1 c. 1 k. as the share of Teeluckdharee Chowdhry under a deed of sale, dated 9th July 1834, and is in possession accordingly; a third party, co-sharers in the estate, petition in support of the defence.

The principal sudder ameen considers that the deed of sale to the plaintiff is proved on evidence, and that the sale to Ishree Dutt is fictitious, and the deed registered after the sale to the plaintiff was made absolute, and that the deed of sale to Hunnoman is dated six years subsequent to that of the plaintiffs, the claim is therefore decreed to the plaintiff,

The defendant Musst. Rajmun, in appeal, urges her former pleas, and adds that the evidence to the respondent's deed of sale is discrepant, and that the entry of the transaction in the books of the cazee is discrepant with the deed itself, and that her deed of sale, which was not at issue in the case, is declared to be invalid.

The defendant Ishree Dutt, in appeal, urges his former pleas.

Notices were served on the respondents by the judge on the 15th April 1850, their reply is in support of the decree passed in their favor.

The point to be decided in appeal is the validity, or otherwise, of the deed of sale on which this action is brought.

#### JUDGMENT.

The deed of sale, on which possession is sought, is not registered and the names of the subscribing witnesses are written in one and the same hand, the evidence of two of these witnesses has been taken, Bustee and Luchman Rai; they are discrepant as to the writer

of the deed, the parties present at the transaction, the signatures made for themselves as they are unable to read or write, and as to the person who signed for the sellers. The deed is therefore not valid, and the decree passed must be reversed. The lower court was wrong also in declaring the deeds of the appellants to be invalid, as the only point at issue in the case is the genuineness of the deed produced by the respondent. The decree is reversed, and appeals decreed in both cases, with all costs on the respondents.

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THE 9TH APRIL 1851.

No. 3 of 1849.

*Appeal against a decree passed by Syud Mahomed Mohamid Khan, late 2nd Principal Sudder Ameen, on 20th December 1848.*

Baboo Bhyrub Nurain, Baboo Puryug Nurain and Baboo Purkotin Nurain (Plaintiffs,) Appellants,

*versus*

Roop Manick Jha and four others, first party, Ranee Gurjah Puttee, mother, and Ranee Suree Puttee, Sreedhur Nurain, deceased, second party, Maharajah Moheesha Singh Bahadoor, third party, (Defendants,) Respondents.

THIS suit was instituted on 4th October 1847,\* to confirm possession in 44 beegahs of land in the bed of the river Joogah, appertaining to puttee Larka, a Dakhlee Bhatturner, a Nankar mehal, and to recover mesne profits amounting to rupees 152, 10 as., accruing from date of dispossession, and to set aside proceedings under Act IV. of 1840, dated 5th September and 29th November 1845, 23rd March and 2nd December 1846. Suit valued at rupees 1592.

The plaintiffs claim this land as part and parcel of their rent-free mehal, and declare that they have been dispossessed of it by the first party of defendants, the farmers of mouza Bugwuk; that all lands situated on the westward of a certain plot of waste land belongs to them, and the lands to the east of the plot belong to Bugwuk; that the other defendants are proprietors in the talooka to which mouza Bugwuk belongs.

The defendants object that the plaintiffs ought to have valued the suit at the estimated value of the lands claimed; that the boundary of the land and date of dispossession are not specified; that the land in dispute has always belonged to Bugwuk, and has been ruled to them in proceedings held by the criminal courts after full enquiry.

The second principal sudder ameen dismisses the suit, as he considers that the plaintiffs have failed to prove the boundary of the lands claimed and have not filed a map of the spot, and that the long possession of the defendants is fully established.

The plaintiffs, in appeal, urge their former pleas, and add that the lower court ought to have sent an ameen to make a local enquiry, and that their map *was* presented in court, and the principal sudder ameen passed a verbal order that it was to be produced whenever the case should come up for a final hearing.

Notices were served on the respondents by the judge on the 8th September 1849, and, in their reply, they support the decree passed in their favor.

The points to be decided in appeal appear to be whether the investigation in the lower court is complete, and if so, whether or no the appellants have failed in proving their claim.

#### JUDGMENT.

The vakeels of the appellants in the lower court have been called upon, and declare that the map now filed was presented to the second principal sudder ameen as stated in the moojeebat of the appeal, and although their account of the proceeding is most improbable, and the judge is unfortunately dead, before whom this is alleged to have occurred, I have no alternative but to declare the present enquiry to be incomplete and to reverse the decree, and direct a re-investigation *de novo* in the case and a refund of stamp value to the appellants. The second principal sudder ameen is directed to make any further enquiry he may think to be necessary as regards the conduct of the pleaders in this case.

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THE 14TH APRIL 1851.

No. 49 of 1849.

*Appeal against a decree passed by Moulvee Neamat Alli Khan, late Principal Sudder Ameen, on 18th May 1849.*

Kheedhun Chowdhry, (Defendant,) Appellant, in the suit of Bunsee Takoor himself and guardian of Lothan Takoor, son of Rungee Takoor, deceased, heirs of Omrow Takoor, Dhurun Takoor, Monead Chowdhry, and Bustee Takoor, (Plaintiffs,) Respondents,

*versus*

Appellant and Boondoo Chowdhry, (Defendants,) Appellants,

THIS suit was instituted on 29th June 1847 in the moonsiff's court at Dulsing Surai, and was transferred to the principal sudder ameen's court by an order of the judge, dated 29th February 1848, to recover the sum of rupees 275, 14 as., arrears of rent for 1249 and 1250 Fusly, for cultivation in mouza Chonowlee Khoord.

The appellant having omitted to make the plaintiffs, Jewan Takoor and Gouree Takoor, respondents, and having made Bustee Takoor respondent, who was not a plaintiff, and this irregularity not having been cured within the time prescribed in conforming with No. 211, Circular Order of 1st July 1842, made applicable to

the local appellate courts in Circular Order 13th April 1847, the decree in this suit is upheld, and the appeal dismissed.

THE 16TH APRIL 1851.

No. 11 of 1849.

*Appeal against a decree passed by Moulvee Neamat Alli Khan, late Principal Sudder Ameen, on 28th December 1848.*

Sheo Churn Lall and Ochumbit Lall Mathao, (Plaintiffs),  
Appellants,

*versus*

Musst. Soorjah Kooer, and Baboo Rugoonundhun Singh and Baboo Ramonoograh Singh, (Defendants,) Respondents.

THIS suit was instituted on 23rd July 1847, to set aside a lease granted on 8th Chyte 1227 F. S., and to recover possession and obtain a mutation of names in the record of proprietors for  $5\frac{1}{2}$  annas in mouza Kullianpore Bustee, uslee and dakhilee, and to recover rupees 547, 14 as, 9 pie, as mesne profits of a third share in the estate. Suit valued at rupees 4725, 14 as,  $10\frac{1}{2}$  pie.

The plaint is that 8 annas in this estate was sold on 8th April 1847, as the right and interest of Molee Singh in execution of a decree had by Chadee Lall; that the plaintiffs were the purchasers; that on a proclamation being issued to give them possession, they were opposed by the defendant Soorjah Koer, on the plea that she had possession of  $5\frac{1}{2}$  annas of the estate by right of ticca peshgee; that Rugoonundhun Singh and Ramonoograh Singh are made defendants, as they objected at the time of execution of decree; that they had purchased the right of Soorjah Koer in the estate; that the peshgeedars have realized more than the sum advanced from the usufruct of the estate.

The defendants Rugoonundhun Singh and Ramonoograh Singh, in reply, plead that they purchased the ticca peshgee interest of Musst. Soorjah Kooer, a right which she had acquired from Molee Singh, with a stipulation that the farmer should enjoy any surplus income accruing from the estate after satisfying the Government demand, and paying the village expenses, and that, if after the expiry of the lease, the money advanced was not made good in one payment, the farm should be continued; that the plaintiffs are bound to make good the advance before possession can be rendered to them; that there was no *proviso* in the lease that any portion of the income of the estate should be credited against the advance, and no stipulation for interest was made in the lease bond; that any income which may have accrued is to be considered as interest.

Soorjah Koer defendant, in her reply, supports the pleas urged above.

The principal sudder ameen dismisses the claim, he considers that as the plaintiffs were cognizant at the time of the auction if this lien on the estate they have purchased themselves into a position which renders them liable to pay up the advance before possession can be rendered to them; that the several precedents filed by the plaintiffs apply to mortgaged estates, and have no reference to a transaction of the present nature, and that whatever surplus income the peshgeedars have derived amounts only to the interest due to them on the sum advanced; that the plaintiffs have failed to produce the precedents in support of their cause though time had been allowed them to do so.

The plaintiffs, in appeal, urge all their former pleas, and add that the week granted to them to produce precedent was not time sufficient; that the lower court has not noticed in the decree the legal opinion filed by them under Section 20, Regulation XXVII. of 1814 and Section 9, Regulation I. of 1846.

Notices were served on the respondents on the 8th September 1849 by the judge; in their reply they support the decree passed. The point to be decided in appeal is whether or no the appellants are liable to make good the amount advanced on the estate by the peshgeedars before possession in their purchase can be rendered to them.

#### JUDGMENT.

Neither precedent nor legal opinion was requisite in this case.

I agree with the principal sudder ameen in opinion that the appellants must make good the advance before possession is rendered to them. There is nothing to show that the peshgeedars have realized from the estate any thing beyond the legal interest on the sum advanced, the estate was sub-let by the peshgeedars at an annual jumma of 2200 rupees, and after deducting 1059 rupees, the Government revenue from this amount, a surplus is left which only meets, and does not exceed the legal interest due on the advance. Due notice of this lien was given to the appellants before they purchased into the estate, and they must be bound by the terms on which Molee Singh leased this property to the ancestor of Soorjah Koor. For these reasons I uphold this decree, and dismiss the appeal, with costs.

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THE 17TH APRIL 1851.

No. 13 of 1849.

*Appeal against a decree passed by Moulvee Neamut Alli Khan, late Principal Sudder Ameen, on 28th December 1848.*

Sheo Churn Lall and Ochumbit Mathoe, (Plaintiffs,) Appellants,

*versus*

Bolee Chowdree, (Defendant,) Respondent, and Moolee Singh, deceased, Defendant.

THIS suit was instituted on 23rd January 1847, to set aside a lease for 1 anna 3 pie in mouza Kullianpore Bustee, Uslee-midakhilee, dated 23rd Phalgun 1251 Fusly, and to recover 171 rupees, 8 annas, 3 pie, as mesne profits. Suit valued at 498 rupees, 8 annas, 3 pie.

The plaint is that the plaintiffs purchased 8 annas of this estate as the right and interest of Moolee Singh, sold in satisfaction of the decree of Chadee Lall; that on their being proclaimed proprietors they were opposed by the defendant, Bolee Chowdree, on the plea of his having a ticca peshgee claim over this share of the estate; that the plaintiffs were also opposed by Soorjah Kooer as claiming a ticca peshgee right over 5 annas 1 pie; that this action is to reverse the lease to the defendant to whom 74<sup>4</sup> rupees is due as zurpeshgee from Moolee Singh; that sale proceeds amounting to 2000 rupees are deposited in the collectory for Moolee Singh; that the defendant is to take the amount of his claim from the money so deposited, and to render possession to the plaintiffs.

Bolee Chowdree defendant, in reply, pleads that the term of his lease has not expired, and he cannot be ousted from his farm, and that the plaintiffs made this auction purchase with a full knowledge of the lien, and if on the expiry of the lease they make good the money advanced, they can have possession.

Moolee Singh dies whilst the suit is pending, and the plaintiffs have refused the option of making his heirs defendants.

The principal sudder ameen dismisses the claim, being of opinion that the lease cannot be set aside before the term of it has expired, and the plaintiffs do not attempt to prove that it was fraudulently obtained; that the rights and interest of all claimants in an estate sold in satisfaction of a decree of court are reserved, and if the plaintiffs make good the advance on the expiry of the term of the lease they can get possession.

In appeal, the plaintiffs urge that as the purchasers of the right and interest of Moolee Singh they are authorised to dispose of the sale proceeds in satisfying claims against him.

Notice was served on respondent by order of the judge, dated 8th September 1849. The reply supports the decree.

It appears that the principal sudder ameen placed a lien on 498 rupees of the surplus sale proceeds deposited in the collectory, and belonging to Moolee Singh on the petition of Sheo Churn Lall whilst the suit was pending, and this lien has never been removed.

This order was passed too on the identical petition in which the plaintiffs declared that they would not press their claim against the heirs of Moolee Singh.

The point to be decided in appeal is, whether or no the appellants have any claim to oust the respondent from his farming interest in this estate.

#### JUDGMENT.

The lease was legally granted to respondent, and the appellants had due notice of the lien at the time of purchase; they have therefore no ground whatever to oust the respondent before the period of the lease has expired. I therefore uphold this decree, and dismiss the appeal with costs, and fine the appellants fifty rupees each for a litigious appeal, and order that the lien on the money belonging to the estate of Moolee Singh be immediately removed.

THE 17TH APRIL 1851.

o Nos. 12 and 14 of 1849.

*Appeals against a decree passed by Moulvee Neamut Alli Khan,  
late Principal Sudder Ameen, on 28th December 1848.*

No. 12, Sheo Churn Lall and Ochumbit Lall Mathao, (Defendants,) Appellants,

No. 14, Baboo Rugoonundhun Singh and Ramonoograh Singh, (Defendants,) Appellants,

In the suit of Doomah Singh and Beekdharee Singh, (Plaintiffs,) Respondents,

*versus*

Moolee Singh, Baboo Chadee Lall and Musst. Soorjah Kooer, and by supplemental petitions Govindah Chowdhry, Sheo Churn Lall, Rugoonundhun Singh and Ramonoograh Singh, Defendants.

THIS suit was instituted on 22nd February 1847, to decide a title and for possession in 18 gs. out of 2 annas, 13 gs. 1 c. 1 d., a sixth share in Kullianpore Bomayah and Kullianpore Bustee, Uslee-midakhilee, and to confirm the registration of names as proprietors, and to recover mesne profits, amounting to rupees 920-11-16. Suit valued at rupees 1367, 12 annas, 7 c. 16 k.

The plaint is that the share now claimed in this estate was sold to the plaintiffs under a deed of sale executed on 9th Aughun 1229 by Gonesh Dutt on his own behalf, and as the accredited agent of

Shunker Dutt and Byjnath Dutt; that the name of Doomah Singh only was entered in the deed; that a mutation of register was effected in his name; that Shunker Dutt and Byjnath Dutt sued to set aside the deed of sale of their shares on the plea that it was executed during their minority; that their suit was decreed to them, and the plaintiffs in consequence were left in possession of only one share; that Moolee Singh took out execution of a decree against Gunesh Dutt, Shunker Dutt and Byjnath Dutt; that in this tulle-ka he entered the right and interest of the three as anna 1-15-2-2, and on a local enquiry by an ameen duly appointed to ascertain the parties in possession, it was proved that Shunker Dutt and Byjnath Dutt occupied two shares, and the share of Gunesh Dutt was declared to be in occupation of the plaintiff Beekhdharee Singh; that notwithstanding this the interests of Gunesh, Byjnath and Shunker Dutt were sold and purchased by Moolee Singh; that the objections urged by the plaintiffs against Moolee Singh being put in possession were rejected; that now Chadee Lall has possession in 4 annas by right of purchase from Moolee Singh; that the remaining four annas prior to the sale was occupied by Soorja Koor; that the claim of the plaintiffs is against Moolee Singh, and as his purchased and ancestral rights are confused by sale and ticca, Chadee Lall and Soorjah Koor are made defendants. On the 22nd May 1847, the plaintiffs were allowed to file a supplemental petition to the effect that the interest of Moolee Singh in the estate had been sold on 6th April 1847, in satisfaction of a decree had against him by Chadee Lall and Konyah Chowdhry; that his interest in Kullianpore Bomayah had been purchased by Goondut Chowdhry, and his interest in Kullianpore Bustee by Sheo Churn Lall, vakeel, and praying to make these purchasers defendants in the suit. Another supplemental petition was filed on 19th July 1847, making Baboos Rugoonundhun Singh and Kemoonagrah Singh co-defendants as the parties to whom Musst. Soorjah Koor had transferred her ticca peshgee interest in the estate.

The defendant Chadee Lall, in reply, pleads that the plaintiffs have no claim against him, as their claim is for the share of Gunesh Dutt, and he has possession in four annas of the share of Moolee Singh by decree of court; that the plaintiffs had failed in a claim for pre-emption against him and Moolee Singh.

The defendant Soorjah Koor, in reply, pleads that she acquired a ticca peshgee right over 5 annas, 1 pie, of the ancestral share of Moolee Singh in this estate, and has transferred her interest to Rugoonundhun Singh and Ramonoograh Singh; that she never had any right in the share of Gunesh Dutt now claimed and purchased by Moolee Singh.

Sheo Churn Lall, vakeel, defendant, in reply, pleads that Moolee Singh sued and obtained a decree on a bond executed by the



father of Goneesh Dutt, Shunker Dutt and Byjnath Dutt, whose rights and interests in the estate were sold in satisfaction of the decree and purchased by Moolee Singh; that the plaintiffs were also liable for the decree of Moolee Singh, inasmuch as it was ruled in execution of decree that if the amount decreed was not satisfied by the sale of the rights of Gunesh Dutt and his two partners then the share of Beekhdharee Singh should be sold; that the decree was satisfied without the sale of Beekhdharee Singh's interest; that this suit is consequently not tenable.

The defendant Goondah Chowdree, in reply, pleads that on 5th April 1847, he purchased at auction the interest of Moolee Singh in Kullianpore Bomayah, and that the reply of Sheo Churn Lall is his defence also.

The defendants, Baboos Rugoonundhun and Ramonoograh Singh, plead that they have purchased the interest of Soorjah Koor in the estate, that the lease was granted prior to the sale, and that the claim of the plaintiffs will not reach the share leased to them.

Moolee Singh does not defend the suit.

The principal sudder ameen decrees to the plaintiffs possession in 18 gs. of the sixth share of the estate, from the 5 annas, 1 pie held in lease by Rugoonundhun Singh and Ramonoograh Singh, with law expenses of the suits and mesne profits to be calculated hereafter and to be satisfied from the effects of Moolee Singh, the other defendants are exempted from liability and the peshgeedars referred for indemnification to the heirs of Moolee Singh, and that the extent purchased at auction will be defined on the purchasers suing for possession. The reasons given for this decree are that by the decree of court in the suit of Byjnath Dutt and Shunker Dutt, *versus* the plaintiffs Doomah Singh, two shares in this sixth share were ruled to them, and one share, namely, that of Gunesh Dutt, was ruled to Doomah Singh; that the interest put up to auction by Moolee Singh in satisfaction of this decree was only 1 anna 15 g., 2 c. 2 d., or two shares, and the ameen's enquiry shows that the share of Gunesh Dutt was in the occupation of the plaintiffs; that consequently only two shares were sold to Moolee Singh, who was not justified in obtaining possession in the share of Gunesh Dutt; that the next consideration is how the plaintiffs are to be restored to possession, since Moolee Singh is ousted of all possession in the estate; that out of 8 annas the ancestral and purchased share of Moolee Singh in the estate, 4 annas has passed into the hands of Chadee Lall by decree of court, and that cannot be disturbed, and as there remains available in the hands of the peshgeedars 3 as. 19 gs. and a little more, it is from this share that the plaintiffs must recover their possession.

Two appeals are instituted against this decree; the peshgeedars object that possession ought to be rendered to respondents out of the 4 annas in the occupation of Chadee Lall; that Moolee

Singh has left no effects and that it is unjust to disturb their possession.

Sheo Churn Lall, vakeel, objects in appeal that as the suit is based on a deed dated twenty-six years ago, this claim is barred by the law of limitations, and that no objections were ever urged by the respondents prior to the sale. Notices were served on the respondents under the orders of the judge, dated 8th September 1849.

The respondents, in reply, support the decree passed in their favor.

Chadee Lall, as a third party in appeal, claims his right to undisturbed occupancy in 4 annas of the estate.

On the 14th instant Sheo Churn Lall, vakeel, appellant, petitions that Ochumbit Mathao is made co-appellant in the case by mistake.

The points to be decided in appeal are, first, whether the suit is barred by the statute of limitations; secondly, do the respondents prove their right to the share claimed? thirdly, how is possession to be rendered to them.

#### JUDGMENT.

The objection that this action is barred by lapse of times has only been raised in appeal; however, as the respondents were ousted from this share by proceedings, dated 7th February 1842, consequent on the execution of a decree sale, they could have had no cause of action nor ground for urging objections prior to that event. The decree quoted by the lower court and the local enquiry on the estate fully establish the right, as well as the occupation of the respondents over the share now claimed.

They have therefore a good claim for a re-possession against Moolee Singh in 18 gundahs as the third share of Gunesh Dutt, in a sixth share of the whole estate. The ancestral interest of Moolee Singh in this estate appears to have been 5 as. 6 g. 2 c. 2 d., which is leased to the peshgeedars, and he got possession by right of purchase in 2 as. 13 g. 1 c. 1 d.

It is not apparent whether the 4 annas share in Kullianpore Bomayah decreed to Chadee Lall, is the ancestral or purchased rights of Moolee Singh, at all events his interest cannot now be disturbed. The principal sudder ameen seems to have considered that the 4 annas share decreed to Chadee Lall extended over the share of Moolee Singh in the *whole* estate, whereas the decree obtained by him shows that it is confined to Kullianpore Bomayah and its dependencies, and does not in any way reach Kullianpore Bustee and its dependencies.

I agree with the principal sudder ameen in decreeing to the respondents a right of possession in the share claimed, as well as mesne profits to be satisfied from the effects of Moolee Singh; but I differ with him as far as his decree effects the interests of these

peshgeedars (appellants) in Kullianpore Bustee and its dependencies. I therefore amend the decree by ruling that the peshgeedars must render possession over 18 gundahs in Kullianpore Bomayah, and that possession to this extent in Kullianpore Bustee must be rendered by Sheo Churn Lall, who stands in the place of Moolee Singh as regards this portion of the estate.

The appellants must be held equally responsible for the expenses of the respondents in their appeals.

THE 21ST APRIL 1851.

No. 82 of 1849.

*Appeal against a decree passed by Eradut Ali, Moonsiff of Mozufferpore, on 17th February 1849.*

Punchanund Missr and two others, the heirs of Kumlah Dutt Missr, deceased, (Plaintiffs,) Appellants,

*versus*

Qoorban Alli Khan, vakeel, and Shureeatoolah, the son of Meer Abdoolah, his gomashta, deceased, and Chadee Lall, auction purchasers, Mr. Jones and Pearee Lall, re-purchasers, and Mr. Horsma, decreedar, (Defendants,) Respondents.

THIS suit was instituted on 25th May 1848, to recover the sum of rupees 296, annas 14, being the estimated value, principal and interest, of a top of mango trees.

The plaint is that a third share in these mango trees was sold at auction, as the rights and interests of Mahnund Missr, in satisfaction of a decree obtained against him by the defendant, Mr. Horsma; that the third share in 5 beegahs of trees was purchased by the defendant, Chadee Lall, and the third share in 1 beegah was purchased by vakeel Qoorban Alli Khan, defendant, in the name of his gomashta the defendant, Meer Abdoolah; that the plaintiffs obtained a decree to reverse this sale, and due notice was served on the purchasers; whilst the suit was pending not to alienate the property; that they cut and sold the mango trees to Chadee Lall, and he sold them to Mr. Sanders, and the defendant Pearee Lall; and Mr. Jones, and Qoorban Alli Khan sold the trees on his purchase to a timber merchant of the name of Nunkoo; that Mr. Sanders has died without issue. Mr. Horsma, the decreedar, is made a defendant in a supplemental petition.

The defendant Chadee Lall, in reply, pleads that he purchased this third share in 5 beegahs of the mango trees, and re-sold his interest to Mr. Sanders who cut down the trees; that Mr. Sanders died leaving heirs, and the plaintiffs ought to be nonsuited for not having made them defendants; that the claim of the plaintiffs does not in any way reach him.

Qoorban Alli Khan, in reply, pleads that he had no interest in the trees; that the purchase was made by his gomashta on his own account.

Pearee Lall, in reply, pleads that he was only the servant to Mr. Sanders, who purchased the trees and re-sold them to Mr. Jones.

The defendant Shurriet Oollah, in reply, pleads that his father Meer Abdoolah purchased 18 trees, and re-sold them for 4 rupees 8 annas; that this claim will only lay against the decreedar from whom this enquiry to the plaintiffs has arisen.

The other defendants do not defend the suit.

The moonsiff dismisses the claim, because the several defendants deny having cut down and appropriated these mango trees, and the witnesses of the plaintiffs are not able distinctly to depose as to which of them did so, neither are they able to state the real nature of the claim of the plaintiffs; that the decree setting aside the auction sale only established the right of the plaintiffs, and does not prove the damage sustained by them; that the plaintiffs have failed to produce further proof within the period allowed to them to do so.

The plaintiffs urged in appeal their former plea, and observe that Chadee Lall and Shurriet Oollah both admit their purchase and re-sale of the trees.

The point to be decided in appeal is, whether or no the decree passed is consistent with the merits of the case.

#### JUDGMENT.

It is admitted that these mango trees were cut and carried away, and the auction purchasers admit that they sold the trees. This was done in the face of an order passed on the suit instituted by the appellant against her to reverse the sale, warning them not to alienate their purchase; the injury sustained by the appellant from the destruction of his trees arose entirely from the act of these auction purchasers, and though they may not have cut and carried away the trees they admit that they have appropriated the consideration for which they sold them. The simple point therefore to be decided in this case is the actual value of the trees. I consider the decree passed by the moonsiff to be in opposition to the true merits of the case, and I am quite unable to discover his reason for asserting that the respondents severally deny having cut and appropriated the trees, I therefore quash these proceedings, and direct a re-investigation as indicated above, and a refund of stamp value to the appellant.

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THE 21ST APRIL 1851.

No. 70 of 1849.

*Appeal against a decree passed by Pundit Datta Ram, Moonsiff of Teigrah, on 1st February 1849.*

Bedasee Suddah, (Defendant,) Appellant,

*versus*

Purshun Singh, (Plaintiff,) Respondent.

THIS suit was instituted on 21st November 1848, to recover the sum of 29 rupees, 3 annas,  $7\frac{1}{2}$  pie, as arrears of rent for cultivation in the village of Dwakapore, accruing from 1252 up to 1255 Fusly.

The plaintiff sets forth that the defendant is a cultivator in this village of which the plaintiff is a two anna, one pie proprietor, and is in balances on account of the plaintiff's share to the amount now claimed.

In reply the defendant pleads that 5 rupees, 4 annas,  $1\frac{1}{2}$  pie is his liability to the plaintiff; that 4 rupees 3 annas has been paid and receipts granted for it, and the remainder has been collected from him by Chowdry Rampershad Singh, one of the other proprietors.

Chowdry Rampershad Singh, as a third party, petitions that the plaintiff has overstated the extent of his share in the estate, and that he did collect the rent from the defendants as stated by him, because the plaintiff collected from his share.

The moonsiff decrees 26 rupees 5 annas out of the claim to the plaintiff, as the investigation of an ameen appointed to make a local enquiry proves this to be the amount due to him on the cultivation held by the defendant: he also rules that the decree is not to effect the interests of the third party in the suit.

In appeal, the defendant pleads that the moonsiff has decreed illegal cesses to the plaintiff; that the admission of Rampershad Chowdhry exempts him from liability; that a decree dated 9th August 1847 in the case of Beharee Mathao against him proves the extent of his cultivation, and the rates payable thereon.

On 31st March the appellant was allowed fifteen days to produce the decree alluded to in his moojeebat of appeal; this he has failed to do.

The point to be decided in appeal is, whether or no the amount decreed is legal and valid.

#### JUDGMENT.

The fees here decreed are usual, and I see no reason to disturb the decree; it is therefore upheld, and the appeal dismissed, without notice to respondent.

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THE 21ST APRIL 1851.

No. 503 of 1849.

*Appeal against a decree passed by Baboo Bishen Lall, Moonsiff of  
Dulsing Serai, on 16th November 1849.*

Baboo Juggernath Singh, (Plaintiff,) Appellant,

*versus*

Bassah Roy, Oomah Roy, Ramdyal Roy, Hurree Dutt Roy, and  
Kalee Dutt Roy, (Defendants,) Respondents.

THIS suit was instituted on 9th January 1849, to recover the sum of 19 rupees, 11 annas,  $7\frac{1}{2}$  pie, being the amount principal and interest of rent, balances for cultivation in mouza Dhoolé, accruing in 1254 Fusly.

The plaint is that 8 annas of this estate belongs to Musst. Towakul Kooer, and the other half two shares belong to Baboo Byjnath Singh, and the other share or 2 as. 13 gs. 2 c., more or less, is the property and in the possession of the plaintiff; that the defendants cultivate in the estate, and are in balances to the plaintiff to the amount now claimed.

The defendants, in reply, plead that out of the 8 annas of the estate, held by Musst. Nunkooree, the mother of plaintiff, and Baboo Byjnath Singh and others; they have sold 1 anna to the three defendants, Hurree Dutt Roy, Ramdyal Roy, and Kalee Dutt Roy, and 4 annas to Jugmohun Chowdhry and others; that possession has been rendered and mutation of registry effected; that in the three remaining annas, one anna belongs to the plaintiff, one to Byjnath Singh, and one to Sheopershad Singh and others, sons of Bishnath Singh; that under cover of this suit for rent the plaintiff wants to set aside legal transfers; that of the defendants Bussah Roy alone is a cultivator; that in a suit for rents preferred against them by Towakul Kooer, it was decreed that they cultivated 39 beegahs 8 c. 10 d. at an annual fixed rent of 72 rupees 8 annas; that the share of the plaintiff on the rents due from Bussah Roy is 5 rupees, 3 annas, 3 pie, which has been duly paid.

Three separate parties claiming interest in this estate have petitioned in support of the pleas urged by the defendants. The moonsiff dismisses the plaint, as he considers that the proof produced by the plaintiff does not establish this claim, and that there is ample evidence on the record, that proprietary rights are at issue between these litigants, which the plaintiff wishes to dispose of in a suit for rents.

In appeal, the plaintiff urges all his former pleas, and declares that the moonsiff has dismissed the suit without going into the merits of his claim.

Notices were served on the respondents under the orders of the judge, dated 3rd May 1850.

The respondents, in reply, repeat their statement of the merits of the case.

The points to be decided in appeal is whether this suit is liable to be dismissed as being an attempt to establish proprietary right in an action for rent. A regular suit is pending between these parties to establish the proprietary rights of the appellant.

### JUDGMENT.

I agree with the moonsiff in dismissing this claim, more particularly as the appellant has instituted a suit to establish his proprietary right in the share for which this action for rent is preferred, and if he prevails in his suit he will recover mesne profits. I therefore confirm the decree, and dismiss the appeal, with costs.

THE 22ND APRIL 1851.

No. 497 of 1849.

*Appeal against a decree passed by Baboo Bishen Lall, Moonsiff of Dulsing Serai, on 4th November 1849.*

Dhurum Lall Kooer, (Plaintiff,) Appellant,

*versus*

Bonead Kooer and his three sons, (Defendants,) Respondents.

THIS suit was instituted on 10th May 1849, for possession in 1 g. 2½ c., more or less, out of 6 pie in the 7 a. 6 p. divided share in mouza Doomree, Uslee-midakhilee. Suit valued at 13 rupees.

The plaint sets forth that this estate is divided into two shares; that the share now claimed is the ancestral right of the plaintiff in the 7 a. 6 p. puttee; that the defendant Bonead Kooer, who is really a 6½ g. sharer in this puttee, and on the plea that his share was 1 a. 6 g., persued and got a decree for rent at this rate against the plaintiff, and thus ousted the plaintiff from the share now claimed in Jyte 1255 F. S.

The defendants, in reply, deny having ousted the plaintiff, and plead that Bonead Kooer occupies 1 a. 6½ g. in the 7 a. 6 p. puttee, being his ancestral right, and 1 anna by right of purchase made in the names of his three sons; that in May 1840, the puttee was sold for Government balances and purchased by Junnoo Lall; that Junnoo Lall subsequently transferred 1 a. 6 g. 2 c. to Bonead Kooer in the name of his three sons under a deed of agreement; that the remaining share in the puttee was purchased by Junnoo Lall, Churn Lall Kooer and others; that in 1254 Bonead Kooer purchased 3 g. 1 c. in the name of his sons, thus making the present share of Bonead Kooer in all 1 a. 9 g. 3 c.; that the three sons are in no way liable during the lifetime of their father Bonead Kooer.

The moonsiff throws out the claim as he considers that it is proved that 1 anna is the purchased right and  $6\frac{1}{2}$  gs. the ancestral right of the defendants, and that it is evident that the right and interest of the plaintiff in the estate was sold in satisfaction of the decree for rent had against him by Bonead Kooer.

In appeal, the plaintiff urges that his share is merged in the 1 anna purchased by the defendants, and that as this purchased right was obtained from an auction purchaser at a sale, which was reversed, the defendant's right is void also.

Notice was served on respondents under the orders of the judge, dated 3rd May 1850.

The reply of respondents is that the appellant has failed to prove his right in the share claimed.

The point to be decided in appeal is whether or no the appellant is able to establish his right to the share claimed in the present action.

#### JUDGMENT.

I think that a nonsuit is required in this case, the plaintiff is for re-possession on an estate from which the appellant alleges to have been ousted by respondents in a suit for rent. Now, I gather from the record that the appellant was really dispossessed by the sale of this 1 anna share to Bonead Kooer, under four deeds of sale, and, if the appellant has been ousted at all, it could only have arisen from these deeds of sale, and an action to test their validity is the remedy left to the appellant. I therefore reverse this decree, and nonsuit the plaintiff, appellant with costs.

THE 22ND APRIL 1851.

No. 504 of 1849.

*Appeal against a decree passed by Baboo Bishen Lall, Moonsiff of Dulsing Serai, on 13th November 1849.*

Syud Ukbur Alli, (Defendant,) Appellant,

*versus*

Beharee Singh, (Plaintiff,) Respondent.

THIS suit was instituted on the 11th June 1849, in the moonsiff's court at Muhwa, and was transferred for trial to the moonsiff of Dulsing Serai, on account of relationship existing between the defendant and the moonsiff of the former court. The action is brought to recover the sum of rupees 231, 13 annas, 6 pie, due on a bond executed by the defendant in favor of the plaintiff on the 1st Assin 1253, (on the 8th September 1849,) after proofs had been received from the plaintiff, and the case was ready for an *ex parte* investigation.

The defendant petitioned the moonsiff to be allowed to file his reply, giving as his reasons for the delay, which had occurred that he had been afflicted with ophthalmia, and had been obliged to go to Patna



for medical aid; the moonsiff pronounces this statement to be *false*, but gives no reason for thinking it so, and passes an *ex parte* decree in favor of the plaintiff. Against this decree the defendant appeals, and urges that notice of action was served on him by the moonsiff of Dulsing Serai on 14th August 1849, and that on the 23rd of that month, on granting a receipt for the notice, he informed the court that he was ill, and would appear as soon as he was able to move; that on the 8th of the ensuing month he did appear, and petitioned as stated above, and also called the moonsiff's attention to the state of his eye-sight; that the moonsiff on that date filed the petition with the record, and finally disposed of the case on the 13th of the following November, without taking into consideration the objection; that he had satisfied this debt by orders on certain cultivators; notice was served on the respondent by the judge on 3rd May 1850, on which date the vakeel of the appellant declares that his client appeared before the judge quite blind.

The respondent now pleads that he is entitled to the decree passed in his favor; that the debt has not been satisfied in the way alleged by the appellant.

The point to be decided in appeal is whether or no the appellant is entitled to a full hearing.

#### JUDGMENT.

The moonsiff ought to have stated distinctly why he considered the appellant's reason given for not having defended the suit in due time, *untrue*. As the appellant was blind on the 3rd May 1850, I do not think it requisite for him to *prove* that he *was* afflicted with the ophthalmia in August 1849, I therefore reverse this decree, and direct the moonsiff to accept the appellant's proofs, and decide the case on its merits, and a refund of stamp value will be made to the appellant.

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THE 22ND APRIL 1851.

No. 73 of 1849.

*Appeal against a decree passed by Pundit Datta Ram, Moonsiff of Teigrah, on February 1849.*

Bummun Mathoo, (Defendant,) Appellant,

*versus*

Raj Coomar Singh and three others, (Plaintiffs,) Respondents.

THIS suit was instituted, on 23rd November 1848, to recover the sum of 55 rupees, 1 anna, 3 pie, being the amount principal and interest of rent balances for cultivation in the village of chuck Juddah, accruing from 1253 up to 1255 F. S.

The plaint sets forth that the defendant cultivates 7 b. 2 c. 10 ds. in this village of the plaintiffs, and is in balances to the

amount now claimed according to the village account; that the defendant holds a cultivation of 14 bs. 5 cot. jointly with his brother, one Ruhman Mathoo, who is not in arrears.

The defendant, in reply, pleads that 13 b. 5 c. is the extent of the joint cultivation of him and his brother under a pottah granted to them and their father before them; that the annual rent fixed by the pottah in this share in the cultivation is 19 rupees 5 annas; that the total of rent for which he was liable during the three years now claimed for was 57 rupees, 15 annas; that he has paid annually 20 rupees, in all 60 rupees for the three years through the agency of Holas Mathao, and in the presence of respectable eye-witnesses; that as he is entitled to 2 rupees annually as a turban fee, he has paid more than his dues; that this is the rate at which he has always paid to the proprietors on their farmers; that as the plaintiffs have not granted receipts for his several payments, he has made their omission a subject of complaint against them before the criminal authorities.

Ruhman Mathao petitions as a third party in support of the claim of the plaintiffs, and contradicts all the allegations of his brother, the defendant. ●

The moonsiff decrees to the plaintiffs 41 rupees, 9 annas, 3 pie, out of their claim, as he considers it proved that the defendant cultivated 7 b. 2 c. 10 d., at the rate of 3 rupees, 7 annas per beegah. The remainder of the claim is struck off, because the plaintiffs have failed to specify in the plaint the extent of the bowlee and syer liabilities of the defendant.

The defendant, in appeal, urges that the witnesses of the plaintiffs are interested parties; that his brother has colluded with the plaintiffs, and that plaintiffs have tampered with his witnesses, and the moonsiff did not take the depositions of the two who were present.

The point to be decided in appeal is, whether or no the amount decreed is proved to be due from the appellant to the respondents.

#### JUDGMENT.

As the appellant fails to prove the payment he alleges to have made, and the rates at which he claims to cultivate, I agree with the moonsiff in his several reasons for passing this decree. I uphold it, and dismiss the appeal, without issuing notice to the respondents.

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THE 23RD APRIL 1851.

No. 508 of 1849.

*Appeal against a decree passed by Moulvee Syud Muneerooddeen Hossein,  
Moonsiff of Mowah, on 12th November 1849.*

Gowree Shunker, Rugbhur Sahi and Raj Coomar Singh,  
(Defendants,) Appellants,

*versus*

Bhyroo Pershaud, (Plaintiff,) Respondent.

THIS suit was instituted on the 17th July 1849, to recover the sum of rupees 192-8, being the amount principal and interest, zur peshgee, on a farming lease, dated 26th March 1844.

The plaintiff states that he advanced 125 rupees to the defendants for a five years' lease from 1252 to 1255 F. S., of 10 beegahs of bowlee cultivation in the villages of Gool and Danagoroul under a *proviso* that if his possession in the farm, (which was to continue till the money advanced was made good,) should be disturbed, he was to look for indemnification from the defendants; that his possession was disturbed from the 6 anna kist of 1252 Fusly, when he was ousted by the defendants and their servants.

The defendants, in reply, admit having taken this advance, and granted the lease, and plead that the plaintiff is in possession of the farm, accordingly that under Construction No. 898 the only claim preferable by the plaintiff is for possession, and under Circular Order, 10th June 1842, this claim for a refund of the sum advanced is not tenable.

The moonsiff decrees the claim to the plaintiff, observing that as the defendants, in their reply, called for local enquiry as to the possession of the plaintiff, and failed to pay the fees of an ameen, the evidence of their witnesses cannot be taken, and two of the witnesses of the plaintiff proves his case; and, if the assertion of the defendants, that the plaintiff is still in possession was true, they would not have failed in providing for a local enquiry.

In appeal, the defendants urge that their case has not had a fair hearing, and that two of the plaintiff's witnesses depose that he is still in possession of the farm.

Notice was served on the respondent under orders of the judge, dated 3rd May 1850. In reply to the appeal the respondent deprecates the idea of a local enquiry as to possession, since the residents on the estate are all dependants of the appellants.

The point to be decided in appeal is whether or no the possession of the respondent in the farm is proved.

#### JUDGMENT.

The moonsiff has passed an *ex parte* decree in this case, and upon most inefficient evidence, five witnesses have deposed for the

prosecution, one declares he does not know whether the respondent is in possession of the farm or not—two declare that he is ousted, and two declare that he is actually in possession. I therefore consider that the respondent completely fails in proving his dispossession, and reverse this decree, and decree the appeal, with costs.

THE 24TH APRIL 1851.

No. 519 of 1849.

*Appeal against a decree passed by Moulvee Syud Muneerooddeen Hossein, Moonsiff of Mowah, on 30th August 1849.*

Sadawan Rai, Karoo Rai, and Musst. Rookman Kooer, mother of Lungut Rai, deceased, Principal, (Defendants,) Appellants, in the suit of Omrow Rai and Maneah Rai, (Plaintiffs,) Respondents,

*versus*

The Appellants and Byjnath Rai, and forty-two others, precautionary Defendants.

THIS suit was instituted on 14th May 1849, to confirm possession in and to become registered as proprietors of a. 6 g. 2 c., share in 4 bs. 3 bis. 7 door. of land in a 1 anna share in the village of Delawahpore. Suit valued at rupees 12, 10 annas, 3 pie, three times the amount of the annual jumma.

The ~~plaint~~ is that the share now claimed was sold for rupees 12, 8 as., to the ancestors of the plaintiffs, Anoop Rai and Dahul Rai, under a deed of sale, dated 25th Mohurru 1191 Fusly; that the plaintiffs and their ancestors have held undisturbed possession ever since; that this village was resumed subsequently, and when notices for a settlement were issued the plaintiffs being too sick to attend were prevailed upon by the defendant, Sadawan Rai, to give him a commission to have the settlement made in their names; that contrary to this agreement, and in collusion with the defendants, Karoo Rai and Lungut Rai, he obtained a settlement in their three names, omitting the names of the plaintiffs; that the plaintiffs on their petition to the collector were referred to the civil courts for redress; that this action is brought to prevent any injury from arising to the plaintiffs in consequence of the settlement from this share having been made in the names of the principal defendants; that the other defendants hold proprietary rights in the estate, and are made defendants as a precautionary measure.

Sadawan Rai and the other principal defendants, in reply, plead that the plaintiffs are cultivators on the estate and have no proprietary rights; that the plaintiffs preferred a summary suit for rents against Sheodad Takoor, who confessed judgment, and on their objections to the suit it was ordered that their interests were not to be effected by the decree passed; that the shareholders in the village are at variance with them, and have got

up the present action. Of the precautionary defendants, Byjnath Rai and five others, plead that the plaintiffs are only cultivators, and that they themselves are the real proprietors of the estate ; that they were too sick to prefer their claims at the time of settlement, but intend to do so hereafter in a civil action.

Jugunath Rai, in reply, admits the claim of the plaintiff, and declares that he rents the share in dispute from the plaintiffs.

Beekdharee Rai and four others, and Buktour Rai, in reply, support the plaint.

Rambuksh Rai petitions as a third party in the suit, that he has purchased the rights and interest of Sadawan Rai in the estate, sold in satisfaction of a decree of court.

The moonsiff passes a decree in favor of the claim of the plaintiffs against the principal defendants, observing that although these defendants and Byjnath Rai and others of the precautionary defendants deny the proprietary right of the plaintiffs, yet they produce no proof to support this denial ; that the deed of sale, the pottah and kuboolout of farmer, the collector's receipts for revenue and the evidence of the witnesses of the plaintiffs' cultivators in the village, and the admissions of several of the proprietors of the village, establish the proprietary right of the plaintiffs, and that they and their ancestors are and have been in possession by virtue of the sale of this share to them ; that the deceit of the defendants at the time of settlement is not to be allowed to wrong the plaintiffs.

The appellants urge that the suit is barred by the law of limitations ; that the suit is wrongly valued ; that the documents on which the moonsiff has based this decree have not been identified by any authority.

On the 9th November the appeal was struck off for non-attendance of appellants, and was restored to the file under Act XVI. of 1845, on the 31st December 1849.

The point to be decided in appeal is whether or no the respondents have proved their claim to be confirmed in possession of this share and to have their names recorded as proprietors.

#### JUDGMENT.

The two first pleas urged in appeal were not raised before the court of first instance, and if they had been, they would not have assisted the appellants' case, seeing that the respondents have never been ousted, and that as the real claim is to become recorded proprietors, the suit is rightly valued, the appellants do not prove that the respondents were only in possession of these lands as cultivators, and the respondents fully prove their possession as proprietors by the documents and evidence quoted by the moonsiff. I therefore confirm the decree, without issuing notices on respondents.

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THE 24TH APRIL 1851.

No. 514 of 1849.

*Appeal against a decree passed by Kaze Mohummud Allum, Moonsiff of Koelee, on 10th December 1849.*

Guneshee Singh, Teeluckdharee Singh and three others, heirs of Muneah Singh and Durgapal Singh, Jyram Singh, Shewan Singh, Jypal Singh, and Gopal Singh, heirs of Sheoram Singh, deceased, principal, (Defendants,) Appellants,

In the suit of Buchun Singh and Horill Singh, (Plaintiffs,) Respondents,

*versus*

The Appellants, Rampershad Singh and forty-five others, precautionary Defendants.

THIS suit was instituted on 5th March 1849, to decide a title and for possession and mutation of names in the registry of proprietors, and to define the jumma and rukba of a 2 as. 17 g. 1 c. 1 k. share in a third share of mouza Madhapore, and to recover 77 rupees, 11 annas, 3 pie, as mesne profits, accruing during 21 months of 1255 and 1256 Fusly. Suit valued at 89 rupees, 11 annas, 3 pie.

The plaint is that both parties in this action are the rightful heirs of Hurdul Singh and Futteh Singh, who died without issue, leaving this estate; that their widows held a life interest in the estate; that the heirs jointly sued the widows of Hurdul Singh, who was about to alienate the property and got possession decreed to them; that the plaintiffs were a party to paying the expenses of the law suit, and subsequently to granting a lease of the share thus obtained to Bridjbookun Takoor; that at the expiry of the lease the estate was resumed by the proprietors; that the plaintiff received their portion of the income of the estate up to 1254; that since that period the defendants will neither pay the income due to the plaintiffs, nor allow their names to be registered as joint proprietors.

The principal defendants, in reply, deny that the plaintiffs have any claim in the share of Hurdul Singh; that they were no party to the suit nor to the lease subsequently granted; that they took no part in performing the funeral ceremonies of Hurdul Singh or his descendants; that the third share in mouza Madhapore was decreed to them in 1833, and the decree was confirmed in special appeal in 1838; that they have been proprietors ever since that. Hurdul Singh died in 1210 and Futteh Singh in 1218, and this claim is therefore barred by the law of limitations; that they have succeeded to other estates by right of inheritance from Hurdul Singh and Futteh Singh and the claim of plaintiffs ought to extend to those estates.

The defendants, Hurdul Singh and nine others, defend the suit on the above pleas, whilst Rampershad and twelve others plead in support of the plaintiff.

The other defendants do not defend the suit.

The moonsiff decrees the claim to the plaintiff, observing that both parties admit their inheritance from one common ancestor, Lallsur Takoor; that the principal defendants sued as heirs and obtained a final decree in 1838 for this share in the estate of an ancestor who had died without issue; that the suit is not therefore barred by lapse of time; that it is on evidence that the plaintiff joined in defraying the expense of the suit, and also in the lease subsequently granted of the share decreed, and that the plaintiffs have received their portion of the income of the estate for three years after the lease had expired, and the estate resumed by the proprietors; that the plea of the defendants that the plaintiffs ought to have sued for the shares left by their ancestor in other estates, is not tenable since the share in this village alone was the one decreed.

In appeal, the defendants urge that the suit is barred by the law of limitations, and that the twelve years must be calculated from the date of the first decision.

Notices were served on the respondents under the orders of the judge, dated 3rd May 1850. In their reply they support the decree passed in their behalf.

The points to be decided in appeal is whether in the event of this suit not being barred by the law of limitations, respondents' claim to this share is a valid one.

#### JUDGMENT.

The appellants do not deny that the respondents are co-heirs with them of the ancestor from whom this third share in Madhopore has descended; the appellants sue and get a decree for this share, therefore under Construction No. 980, if this suit of the respondents was instituted within twelve years of the date of that decree, the respondents have a clear right and title to be admitted as co-sharers in the estate. If it was not in evidence that they were parties to that suit, nor to the lease, nor that they had held joint possession in virtue of the decree still they would be legal co-sharers. This share was finally decreed to the appellants on 3rd December 1838, and the present suit is instituted on the 5th March 1849, just one year, eight months and twenty-seven days short of twelve years from the date of the decree. I therefore agree with the moonsiff in all his reasons for decreeing this claim, and uphold the decree, and dismiss the appeal, with costs.

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THE 26TH APRIL 1851.

No. 4 of 1850.

*Appeal against a decree passed by Baboo Bishen Lall, Moonsiff of  
Dulking Serai, on 6th December 1849.*

Hullooman Dutt and Bugwan Lall, (Defendants,) Appellants,

*versus*

Banee Purshaud, sub-tenant, and Sheikh Gholam Hider, proprietor,  
and as guardian of Sheikh Abdool, vakeel, his brother, a minor,  
(Plaintiffs,) Respondents.

THIS suit was instituted on 15th March 1848, to recover rupees 211, 15 annas, 10½ pie, rent balances accruing in 1253 Fusly, for 24 b. 1 bis. of cultivation in the village of Mohumadpore, and to set aside a decision of a deputy collector, dated 21st July 1846, and an order of the collector, 14th April 1847.

The plaint is that the defendants cultivated under the plaintiffs as stated above, and the balances here claimed have accrued on their cultivation; that they had pursued the defendants in a summary suit, and had failed in obtaining a decree; that the defendants were formerly proprietors in the village, and, as they refused to enter into written agreements to cultivate, the plaintiffs gave them due notice under Clauses 9 and 10 of Regulation V. of 1812; that in the event of their continuing to cultivate without making terms they would be held responsible for rent at the highest rates paid in the village.

The defendants, in reply, plead that this suit ought to have been instituted within a year of the date of the decree passed by the deputy collector; that as proprietors they have always cultivated at the rates of 8 annas, 6 annas and 4 annas per beegah; that as notice of higher rates was not proclaimed, the plaintiffs cannot claim enhanced rent. Three shareholders in the estate support the defendants in petitions as third parties to the suit, whilst one party petitions in favor of the plaintiff.

The moonsiff decrees 83 rupees, 7 annas, 6 pie of the claim to the plaintiffs, observing that the suit is cognizable as it is brought within a year of the date of the final decree passed by the collector in the summary suit; that the extent of cultivation for which these balances are claimed is not objected to; that the rates proclaimed by the plaintiffs are excessive; that a decree passed by the additional judge on the 20th January 1847, affords a precedent; that rupees 2-12 per beegah is the proper rate for the lands in question.

In appeal, the defendants urge their former pleas, and add that it will be found in their reply to the plaint, that they do object to the extent of cultivation for which rents are claimed from them; that an ameen ought to be sent to make a local enquiry; that no



mention if any proclamation for enhanced rents was made in the summary suit; that the rates in the additional judge's decree are for a village three days' journey from Mohumadpore, and will not apply in the case on 3rd May 1850.

Notices were served on respondents by the judge. They file a vakalatnamah but do not reply.

The point to be decided in appeal is the equity, or otherwise, of the rates on which this amount of balance is decreed to the plaintiff.

#### JUDGMENT.

I agree with the moonsiff in his several reasons for passing this decree, the extent of cultivation is not directly objected to in the reply of the appellants to the plaint, and the proclamation of enhanced rates is mentioned in the plaint of the summary suit. I consider the rate fixed by the moonsiff to be in all respects a just one and therefore confirm the decree, without issuing notice on the respondents. The moonsiff will be informed that it is not sufficient that only the decree of the summary suit should be filed in this case, as Clause 1, Section 31, Regulation VII. of 1822, requires that the proceedings held in a summary suit must be called for and filed on the record of a regular suit preferred to contest a summary award.

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THE 28TH APRIL 1851.

No. 515 of 1849.

*Appeal against a decree passed by Moulvee Syud Muneerooddeen Hossein, Moonsiff of Mowah, on 10th December 1849.*

Ekbali Ullee Khan, (Plaintiff,) Appellant,

*versus*

Sheo Ram Chowddhry, (Defendant,) Respondent.

THIS suit was instituted on 9th September 1848, to recover rupees 225-9, being the amount principal and interest due on a bond, dated 16th Assar 1254 Fusly.

The plaint is that the defendant borrowed rupees 197, from the plaintiff, and executed this bond in his favor, promising to pay at the end of Kartick 1255, and has not done so.

In reply, the defendant denies the debt and the validity of the bond, and declares that the action originates in illwill caused by his having refused to satisfy a debt due from one of his dependants to the plaintiff.

The moonsiff observes that although the subscribing witnesses to the bond depose to its genuineness yet he is not satisfied on the point for the following reasons, first, the stamp paper is old and the ink and writing of the deed fresh and recent; secondly, the several subscribing witnesses and the writer of the deed are depend-

ants of the plaintiff; thirdly, Ruggoo, one of the defendant's witnesses, deposes that he was a servant of the plaintiff at the time that this deed was fabricated by one Bishen Lall; that he was invited to subscribe to it, and refused from conscientious motives; fourthly, the deposition of Ramah Roy burkandauz, one of the eight respectable and disinterested witnesses of the defendant, deposes to the cause of enmity pleaded by the defendant; fifthly, other unbiased witnesses depose to the same effect; sixthly, the statement of these witnesses prove that the plaintiff offered to compromise the debt for rupees 50, 15 annas, which he certainly would not have done had he felt this claim to be a just one; seventhly, from a diary kept at the thanna of Mowah, it appears that Bushooh Mathoo, one of the witnesses for the prosecution, admitted that he had deposed to the validity of the bond from fear of violence; eighthly, that it is patent to the world that the defendant is a merchant and banker of noted respectability, and is, therefore, a very unlikely person to have incurred debt. For these reasons the moonsiff declared the deed invalid, and dismisses the claim.

The plaintiff urges, in appeal, that the moonsiff has decided the suit without first taking proof from the plaintiff as to the cause, which delayed him in filing his reply within the prescribed time; that on the 15th September 1848, the defendant petitioned the court, that the plaintiff was looking about for stamp paper and witnesses to supply a deed and evidence for the suit, and prayed that the falsity of the suit might be established by calling on the plaintiff to file his deed at once; that this was allowed, and the deed was at once produced, copied and returned to the plaintiff; that four months elapsed from this date before the defendant filed his reply in the suit; that as the defendant is a person of notoriously bad character it is possible that the moonsiff, who has been once called to account by him in the suit, was afraid of him, and so acted contrary to Section 27, Regulation XXIII. of 1814, and Construction No. 375; that the writer of the deed was named as a witness by both parties in the suit, and he has deposed to the validity of the deed, and yet the moonsiff distrusts his evidence. Notice was served on the respondent under the orders of the judge, dated 3rd May 1850.

The respondent, in reply, pleads that his petition, denying the claim of the appellant, was filed in due time, and consequently there was no occasion for the moonsiff to make the inquiry proposed by the appellant.

On the 29th May 1849, Sheo Ram defendant petitioned the judge that a false suit in a fabricated and interpolated deed had been instituted against him in the court of the moonsiff of Mowah by Ekball Ullee Khan, plaintiff (appellant;) that as the father of Ekball Ullee Khan was the intimate friend and spiritual guide of the moonsiff he had no hope of justice, and that the moonsiff had openly given out that he should get the better of it in the suit, and that he prayed that the

suit might be transferred for trial before an unbiased tribunal; copy of this petition was sent on the same date to the moonsiff for any explanation he might wish to offer on the 6th June, the moonsiff explains that the allegations of Sheo Ram are untrue from first to last; that for the last fifteen years he has decided frequent suits both in favor of and against Ekball Ullee Khan.

The moonsiff in giving a history of the proceedings, which had taken place in the suit, record that on the 15th September only a few days after the suit was instituted, Sheo Ram petitioned this court as he is declared to have done in the Mojeebat appeal of Ekball Allee Khan on the 14th June; this explanation was filed in the record of the suit, and on the same date Sheo Ram again petitioned the judge and accused the moonsiff of notorious corruption and malpractices, and prayed that the suit might be transferred to another tribunal.

The order of the judge on this petition was that the petitioner be directed to make his charges and request, subjects of separate petitions. On the 15th June Sheo Ram petitions to have the suit taken out of the court of the moonsiff of Mowah, giving the same reasons for the request as those stated in his petition of 29th May. The judge refused the petition on the day it was presented, as he saw no reason why the suit should not be determined by the moonsiff of Mowah, and the moonsiff accordingly disposed of the case as stated above.

The point to be decided in appeal is the validity or otherwise of this bond.

#### JUDGMENT.

This decree is not *ex parte*, and as the respondent denied the validity of the claim in his petition of the 15th September, six days after the suit was preferred against him, the omission of the moonsiff in not having noticed this delay in filing a regular reply to the suit is not, in my opinion, sufficient to vitiate the proceedings. As regards the deed I find that the stamp was purchased on the 13th July, and the deed engrossed on the 14th July 1847, and the ink and the paper appear to me to correspond as to age; the subscribing witnesses and the writer of the deed, who was named as a witness for the defence, depose uniformly and satisfactorily to the validity of the deed, and the respondent gives no sufficient cause for the appellant having preferred a false suit against him, besides this the respondent signally failed to establish the falsity of the claim in his attempt to entrap the appellant before the deed was prepared. For these reasons I consider the validity of the bond to be established, and therefore reverse the decree, and decree the appeal, with costs.

The conduct of the moonsiff in this case will be noticed in a separate proceeding.

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THE 29TH APRIL 1851.

No. 9 of 1850.

*Appeal against a decree passed by Moulvee Syud Muneerooddeen Hosein, Moonsiff of Mowah, on 7th December 1849.*

Domun Saho, (Defendant,) Appellant,

*versus*

Musst. Bachun and others, (Plaintiffs,) Respondents.

THIS suit was instituted on 1st September 1846, to recover the sum of rupees 15, 15 annas, due on account of the annas 4, 8 g., 3 c., share of the plaintiffs in mouza Nowah Bada Kullan, as quit rent for four houses occupied by the defendant from 1242 up to 1253 Fusly.

The defendant denies his liability, and pleads that the ancestor of the plaintiffs was worsted in a former action against him for quit rent.

In reply to this the plaintiffs urge that the former suit was for quit rent accruing, whilst the defendant was a proprietor in the village, whereas the present claim is for rent accruing after the defendant has disposed of his proprietary right and became a ryot.

The moonsiff formerly dismissed this claim, on the ground that these houses were not included in the sale of the defendant's proprietary rights in the village.

This decree was reversed in appeal by the late additional judge for reasons detailed at pages 229 and 230 of the printed decisions of the zillah courts for October and November 1848.

The moonsiff now decrees the claim to the plaintiffs in consequence of the additional judge's opinion, that though these houses were reversed from sale yet the land in which the houses are built was not so.

In appeal, the defendant urges that he is still a proprietor in the village, and it is opposed to the custom of the village to exact quit rent from him.

The point now to be decided is whether or no the moonsiff's present investigation warrants him in passing a decree for quit rent against the defendant.

## JUDGMENT.

I gather from the record of this suit that the appellant was a cultivator in this village prior to 1215, and paid the quit rent usual for cultivators; that he subsequently became a proprietor in the village and remained so till 1240 Fusly, an action was instituted against him on the plaintiff's side for rents for cultivation *and for quit rent* accruing prior to 1240 Fusly; a decree was given against him for the rents due on account of cultivation, and he was declared *not liable for quit rent on account of his being a proprietor in the village in 1240*. The appellant sold his proprietary rights in the village, reserving from the sale the houses (for which quit rent

is now claimed) and 4 beegahs, 11 biswas of zeraut lands, he is therefore still a proprietor in the estate, but to a smaller extent than he was prior to the sale. Now, if he has been once declared not liable for quit rent, on the ground of his being a proprietor, that objection still remains, and this is a second action in a point heard and determined before.

This is the first objection raised by the appellant to the claim, and the suit cannot proceed till this point is disposed of. No notice has been taken of this objection in either of the former trials. I am therefore obliged to reverse this decree, and remand the case to be disposed of as indicated above. Should the moonsiff be of opinion that this suit is not barred by Section 16, Regulation III. of 1793, he will state his reason plainly and at full.

The usual order is passed for a refund of stamp value to the appellant.

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THE 29TH APRIL 1851.

No. 14 of 1850.

*Appeal against a decree passed by Baboo Bishen Lall, Moonsiff of  
Dulsing Serai, on 14th December 1849.*

Munoo Chowddhry, (Plaintiff,) Appellant,

*versus*

Sheikh Hosein Buxsh, Musst. Zuboon, widow of Sheikh Mudhut  
Ally, and others, (Defendants,) Respondents.

THIS suit was instituted on 4th September 1848, for possession, mutation of register, and definition of land, and jumma for a 1 pie share in mouza Mohumudpore Sahun, under a deed of sale dated 1st Kartick 1249 Fusly, and a proceeding under Regulation XVII. of 1806, dated 8th June 1848, and to set aside a deed of sale, dated 21st Maugh 1251. Suit valued at rupees 145, 12 annas, 8 pie, being eighteen times the value of the yearly income derived from the share claimed.

The plaint sets forth that the defendant made a conditional sale of his share to the plaintiff under a deed, dated 1st Kartick 1249. That the sale was made absolute on the 8th June 1848; that whilst the case was pending under Regulation XVII., the defendant, Sheikh Mudhut Ally, in collusion with Sheikh Hossein Buksh, obtained a final decree for possession in this share by virtue of a collusive deed of sale, dated 21st Maugh 1251; that the plaintiff petitioned as a third party to that suit; that this action is brought to set aside the collusive decree, which has rendered the purchase of the plaintiff null and void.

The defendant, Sheikh Mudhut Ally, alone defends the suit on the plea that he purchased the share and has had possession finally decreed to him; that the sale to him was *bonâ fide*; that as

the plaintiff was a third party in the suit he ought to have appealed against the decree as his only remedy.

The moonsiff dismisses the claim as he considers that the plaintiff ought to have appealed against the decree passed in the suit to which he was a third party; and that a suit to set aside that decree is not tenable.

In appeal, the plaintiff urges that his suit is tenable as it is preferred to reverse a collusive decree, and that a decree of the Sudder dated 7th September 1847, in the case of Gunesh Dutt *versus* Ramdya, is in point as supporting his appeal. On the 3rd May 1850 notices were served on the respondents by the judge; they file a vakalutnamah, but do not reply to the appeal.

#### JUDGMENT.

The precedent quoted by the appellant is exactly in point, this is *also* a suit brought under Construction No. 1299, to reverse a collusive decree obtained by the respondent to the injury of the appellant, and must be determined by the evidence adduced to prove the collusion. I, therefore, reverse this decree, and direct that the case be returned to the moonsiff, and decided on its merits, and that a refund of stamp value be made to the appellant.

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## ZILLAH TWENTY-FOUR PERGUNNAHS.

PRESENT: H. T. RAIKES, ESQ., JUDGE.

THE 3RD APRIL 1851.

No. 1 of 1849.

*Regular Suit.*

Nundonundun Ghose, Plaintiff,

*versus*

Punchanund Mitter, Bhoobun Mohun Ghose, Kameenee Dasse  
and others, Defendants.

SUIT for the recovery of 6000 beegahs of land, and fishery of khalls and mesne profits. Value of suit 2017 rupees.

The plaintiff avers that he took a lease of three villages, named Teeorya, Bhunderkorah and Nyabad for ten years from Nundololl Singh, the manager of Kameenee Dasse proprietress, at a rent of 1801 rupees, commencing with 1252 and ending in 1261 B. S.; that the terms of the lease gave over to plaintiff the entire rights and interests held by the proprietress in the aforesaid villages with julkar belonging thereto; that after being in possession, the defendant, Punchanund Mitter, in Poos 1255 B. S., dispossessed plaintiff of 6000 beegahs of jungle land, with julkar, and procured himself to be maintained in possession thereof through an Act IV. of 1840 case, plaintiff therefore sued for recovery of the land and julkar, and for mesne profits.

The defendant, Punchanund Mitter, replied that the greater part of the village of Teeorya consists of dense jungle, only a small part of it being under cultivation; that Kameenee Dasse, the proprietress, in Phalgon 1253 B. S., granted to one Bhoobun Mohun Ghose in perpetuity a junglebooree pottah for 6000 beegahs of jungle land; that this pottah was registered and the party put in possession, who commenced clearing some of the land; that in 1255 the defendant purchased the pottah for 925 rupees, registered the sale, and procured the transfer of the property to be recorded in the zemindar's office, and a fresh pottah to be issued thence in his name, which was also registered in the registry office. Defendant was then put in possession, and plaintiff brought him up in an Act IV. of 1840 case; but the foudjarry court maintained defendant in possession of the lands. Defendant pleads that plaintiff's farming lease did not include the jungle



lands of the village of Teeorya, only the lands then under cultivation, and urges in proof thereof that plaintiff's son subsequent to the lease granted to plaintiff, had requested and obtained from the proprietress a junglebooree pottah in perpetuity for 446 beegahs of the jungle lands of this very village, which he would not have done had such lands been included in plaintiff's farming lease.

Bhoobun Mohun Ghose supported defendant's answer.

Kameenee Dasee filed a reply, admitting the grant of a farm to plaintiff of the three villages and julkar, but that such farm did not include the jungle lands for 6000 beegahs of which the defendant, Puncanund Mitter, held a pottah in perpetuity; but that, if he had taken possession of any julkar, it was not included therein.

The point at issue in this case is whether plaintiff's farming lease includes the jungle lands of Teeorya or not, and whether the defendant, Puncanund Mitter, has dispossessed him of the lands and julkar claimed.

The plaintiff filed his farming pottah in proof of his averment, and the court observes that that lease gives to plaintiff the whole and entire right of the proprietor in the aforesaid villages, during the period of the lease, to receive the rents and the julkar appertaining to it; but there is not a single word regarding the farmer's right over the jungle lands, and so important a right could not have been accidentally omitted from the engagement. Plaintiff's claim being for possession of 6000 beegahs, is in itself sufficient to prove that the jungle lands were at the time of granting the farm very extensive, and it is not possible to believe that the contracting parties intended their engagement to extend to them without more particularly adverting to the terms on which they should be occupied. In fact, it is altogether unusual to see any engagement regarding lands of this description, save on long leases, and with reference to their clearance and permanent occupation. In support of this argument the defendant has pleaded the fact of plaintiff's own son having applied for, and received from the zemindar a junglebooree pottah for some of the uncleared lands in this same village, a fact not denied by the plaintiff, but attempted to be rendered unimportant by pretending that his son had also entered into engagements to pay *him* the rent during the period of his farm, an assertion quite unsupported, and altogether improbable. I therefore consider plaintiff's claim to the 6000 beegahs must be dismissed; but as defendant has no right whatever to any julkar included in the village of Teeorya, I decree to plaintiff possession of the fishery of the natural khalls as part of his farm and corresponding amount of the expenses of suit. There is no proof, which can be relied upon regarding wasilat on this part of the claim; plaintiff is therefore only entitled to receive that at the rate claimed by him from date of this decree till recovery of possession. The entire expenses of the other

defendants must be borne by the plaintiff, although they were apparently made co-defendants in compliance with the practice of the courts without plaintiff having suffered any direct injury at their hands, yet this necessary form was one which plaintiff must have been prepared for, and as neither blame nor fraud can be imputed to these parties as affording any ground for plaintiff's action, they are justly entitled to reimbursement of their expenses at the cost of the party who brought them into court.

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THE 14TH APRIL 1851.

No. 229 of 1850.

*Appeal from a decision of Juggernathpersaud Banerjee, Moonsiff of Bishenpore, passed on 23rd July 1850.*

Moynuddee Mundul, (Defendant,) Appellant,

*versus*

Ram Chand Lushkur, (Plaintiff,) Respondent.

THE plaintiff sued for rupees 27, 10 annas, 15 g., amount of a bond, with interest, executed by defendant on the 15th Falgoon 1255 B. S., re-payable in Asar following.

Defendant denied the execution of the bond, and alleged that plaintiff had commenced this suit against him on a forged document, in consequence of his refusing to re-pay him some advances for wood made by a European on account of salt manufacture in which the said European was engaged.

The moonsiff decreed the amount claimed to plaintiff, observing that he had proved the execution of the bond, and that defendant's witnesses failed to satisfy him that any dispute had arisen between plaintiff and defendant regarding the matter alluded to in the latter's reply.

The defendant appeals against this decision, and reiterates the pleas set forth by him in the lower court, alleges that they were quite proved by his witnesses, and that the moonsiff, if he thought more evidence was necessary, should have specified it, and he would have had witnesses brought up.

The defence set up by appellant is a denial of the bond, and a statement that plaintiff had demanded from him payment of some advances, and in consequence of his refusal threatened him with using means to force as much from him in some other way. Witnesses are then brought forward to prove the expression of this threat and the demand of the money due. Native evidence of this description must always be unsatisfactory, and as the moonsiff disbelieved the witnesses, and defendant is unable to bring forward any thing in corroboration of their statements, I cannot set up any opinion in their favor on a mere perusal of their depositions, and

therefore see no good reason to interfere with the decision of the lower court. This appeal is dismissed.

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THE 14TH APRIL 1851.

No. 238 of 1850.

*Appeal from a decision of Juggernathpersaud Banerjee, Moonsiff of Bishenpore, passed on 6th of August 1850.*

Ramlochun Mundul and others, (Defendants,) Appellants,

*versus*

Sheikh Kamal Moollah, (Plaintiff,) Respondent.

PLAINTIFF sues for the value of paddy advanced to defendants in the month of Assar 1245, secured by a contract executed by them, by which the defendants admit having received from plaintiff 14½ solees of paddy on the condition of returning it with half as much in addition to the original quantity in the month of Ughrun following.

Plaintiff claims rupees 55, annas 2, as present value of 21 solees paddy at the time of instituting his suit, 25th Assar 1255.

The defendants deny the advance of the grain, or having executed any contract.

The moonsiff decreed the amount claimed by plaintiff as value of the paddy agreed to be given at the market price of the grain when the suit was brought.

The defendants have appealed, but it is unnecessary to advert further to the circumstances of their case, as the moonsiff has erred in assessing the value of the paddy at the market price of the grain when this suit was instituted. The terms of the contract put in by plaintiff, state that the paddy should be returned to him with half as much in addition in the month of Ughrun 1245 B. S. The moonsiff according to precedent of the Sudder Court of 5th June 1847, Gora Chand Mundul, appellant, *versus* Lall Chand Bundoo, respondent, should have called for proof of the price of paddy in the month of Ughrun 1245, as plaintiff is only entitled to recover at the market rate of that month, which according to the contract was the time agreed upon for re-payment.

This case is therefore remanded to the moonsiff for this purpose, and the stamp fees must be returned to the appellants.

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THE 15TH APRIL 1851.

No. 9 of 1849.

*Original Suit.*

James Joseph Mackenzie, Plaintiff,

*versus*

Obhoy Churn Banerjee, Tarnee Churn Banerjee, Hursoondoree Dabee and Neelmony Mootyloll, Defendants.

FOR possession of a talook named Magoorah, purchased at the sheriff's sale. Suit valued at rupees 1963-8-3.

The substance of the plaint recites that the firm of Mackillop, Stewart and Co. had employed Obhoy Churn Banerjee as their banian, and had sued him in the Supreme Court for 50,816 rupees. That Obhoy Churn failed to enter an appearance to the suit, and his property was brought under sequestration. Amongst this property was the talook now in dispute, which had been conveyed benamee to Obhoy Churn by his father, and transferred on the collector's books in the name of Neelmony Mootyloll; that in order to procure the release of this talook, Obhoy Churn, by the instrumentality of his mother Hursoondoree, served notice of action on the sheriff, alleging the property was her's, and not Obhoy Churn's, and Mackillop, Stewart and Co.\* took upon themselves to defend the action; that Mackillop, Stewart and Co., knowing the talook belonged to Obhoy Churn, then commenced proceedings in equity to set aside Hursoondoree's pretended title, and she replied by asserting her own interests, and stating that the benamee sale was for her benefit; but Neelmony Mootyloll's evidence on oath proved that the property had been conveyed benamee to Obhoy Churn in his (Neelmony's) name, and the court declared it liable for Obhoy Churn's responsibilities; that Mackillop, Stewart and Co., having got a decree against Obhoy Churn for 66,000 rupees, and an order for the sale of his property, caused this talook to be sold by the sheriff on the 23rd of August 1849, when plaintiff became the purchaser for 1000 rupees; that plaintiff procured a bill of sale, and by the assistance of the police got possession, but was immediately ousted by the defendants.

Hursoondoree Dabee first took exception to the plaint, on the ground that the property was not properly described at the sheriff's sale, and without specification of sudder jumma, &c. She then proceeded to state that her husband, Gouri Churn, had acted as executor to her father's estate, and was greatly indebted to it; that to clear off his debt, her husband had twice mortgaged to her, as her father's heir, the property now in dispute, and made over to her the possession of it; that to save the great expense of foreclosing these mortgages through process of the Supreme Court, and to transfer

the talook from her husband's name on the collector's books, it was agreed that a kubala should be drawn up in Neelmony's name, who had managed her father's property, and the talook be recorded in his name in the collectorate. This was accordingly done, and the estate had remained in her possession for eighteen or nineteen years; that Obhoy Churn never held possession, and that the plaintiff has concealed the fact that the Supreme Court only directed such interests as Obhoy Churn might be found to possess as one of the heirs of his father Gouri Churn to be sold in execution of the decree; plaintiff must therefore first ascertain what those interests are before he can prefer a claim on the ground of having purchased them.

Tarnee Churn filed a reply in support of Hursoondoree's statement.

Neelmony Mootyloll supported plaintiff, asserting that the sale of the property by Gouri Churn was benamee, intended to convey the talook to Obhoy Churn and not to Hursoondoree; that the conveyance to Obhoy Churn was in payment of his father (Gouri Churn's) debts to him.

This court having overruled the objection of Hursoondoree regarding the defective description of the property, on the ground that there is no substance in the objection put forward, as the property sued for is sufficiently identified, the question now to be determined is whether plaintiff has proved that Obhoy Churn Banerjee was the real purchaser of this property benamee; and that plaintiff is therefore entitled to have possession of it.

Plaintiff has filed the decree of the Supreme Court in its equity jurisdiction under which this property was brought to sale in execution of Mackillop, Stewart and Company's decree, and also the judgment then delivered by the Chief Justice as printed and published in the *Bengal Hurkaru* of the 22nd of May 1848.

The Chief Justice remarks as follows:—"I have no doubt upon the whole evidence of the correctness of Neelmony's representation that he was not benamee for Hursoondoree, and that that was not the intention. He states that he was benamee for Obhoy Churn; but nothing is proved in this case to show Obhoy Churn's exclusive title to this estate as a trust for him exclusively of his brothers. The bar interposed in favor of Hursoondoree being removed, it must be treated as the estate of Gouri Churn descendible to his sons: and it does not appear to me that more than Obhoy Churn's share in it would be extendible under the sequestration. Had the acts of the parties been consistent with this deed, my decision as to this lot would have been different."

The following verdict was then recorded—"that he (Obhoy Churn) had a seizable interest in lot 8, viz., talook Doorgapore, the amount thereof not being ascertained as Gouri Churn had three sons."

It appears then that the equity decree merely provided for the sale of Obhoy Churn's share in this property, whatever that might

be, as one of the heirs of his father; but that plaintiff purchased it in the belief that the entire property in the talook had been conveyed to Obhoy Churn by the benamee sale, and that on this ground he is entitled to maintain an action for its entire possession irrespective of Obhoy Churn's rights of heirship. In such a case it is incumbent on plaintiff to prove this *particular* title under which he claims the talook, and in this I consider he has altogether failed. The pleading lays great stress upon the admission of Neelmony in his reply to this action, and in his evidence in the equity suit; but in the present suit only so much of Neelmony's reply can be considered as shows that the sale deed, though in his favor, was in reality a benamee transaction from which he derives no rights; but it cannot be allowed to afford either evidence or proof of the vendor's intention in favor of any particular person. Benamee sales being one of the common customs of this country; actions have been maintained by parties interested, and proof of what was the real intention of such conveyances, is regarded by the courts independent of the terms of the written contract; but to support such actions, it must be shown that the party for whose benefit the sale was intended either holds the title deeds or can prove delivery of possession or payment of the consideration, and in this case all these presumptive facts are wanting. Some witnesses have certainly stated on the part of plaintiff that Obhoy Churn has acted as owner of the property; but that he did so, exclusively of the rights of others (the estate being family property) the deposing witnesses could not, in my opinion, have had competent knowledge.

Plaintiff's vakeel, adverting to the circumstances under which his client purchased the estate, has argued that the defendant, Hursoondoree, should be put upon her proof to show that the benamee sale was intended to convey the estate to her; but I am not of that opinion. Plaintiff does not come into court as purchaser of such general rights as Obhoy Churn may have succeeded to, as one of the heirs of his father, Gouri Churn, the original proprietor of the estate; but on the special right said to have been conveyed to Obhoy Churn by purchase of the property, and therefore it appears to me, that he is bound to start his case by proof of some particular fact, which, if left unrefuted, would lead to the conclusion that the benamee sale was for Obhoy Churn's exclusive benefit. This not having been done, it is useless to enquire into the nature of the title by which the defendants hold. I therefore dismiss this claim, with costs against plaintiff.

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THE 16TH APRIL 1851.

No. 242 of 1850.

*Appeal from a decision of Beneenath Bose, Moonsiff of Manicktollah,  
passed on 14th of August 1850.*

Nuffur Bagdee and others, (Defendants,) Appellants,

*versus*

Koylasnath Bose, (Plaintiff,) Respondent.

THIS action was instituted to recover the amount of a bond for 50 rupees, amounting, with interest, to rupees 60, annas 6.

The defendants did not enter an appearance in the moonsiff's court, and the case was decided *ex parte* in favor of plaintiff.

The defendants appeal on the ground that the notice and proclamation said to have been issued by the moonsiff for their appearance, was not witnessed by their neighbours, or the chowkeedar mahulladar, or mundul of their village as directed by the Regulations.

On turning to the papers of this case I find that notice of the action was issued by the moonsiff, and the return to it, made by the peeadah, was that the defendants refused to acknowledge its service upon them. The witnesses to this fact are Munneerooddeen and Kaloo Bagdee; but neither of them are inhabitants of Sealdah or neighbours of the defendants. The same witnesses four days afterwards also certify the service of the proclamation at the residences of the defendants.

The moonsiff has not acted up to the law in this matter as prescribed by Regulation XXIII. of 1814, the witnesses accompanied the plaintiff's people and, on arriving at Sealdah, took with them, the chowkeedar of the mohullah in which the defendants reside, and state that he gave a certificate in writing of the defendants' refusal to sign the notice. There is, however, no other evidence regarding the notice and proclamation, but that of the witnesses who accompanied the peeadah, and as they are not neighbours of the defendant their attestations are not sufficient. Such attestation must be on the part of such parties as the law directs in Section 22, Regulation XXIII. of 1814, and the moonsiff should not have neglected to take this precaution.

The case must now be remanded to be tried on its merits after hearing the defence. The appellants will receive back the stamp fees of their appeal.

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THE 16TH APRIL 1851.

No. 244 of 1850.

*Appeal from a decision of Beneenath Bose, Moonsiff of Manicktollah,  
passed on 16th of August 1850.*

Radhamohun Doss, (Plaintiff,) Appellant,

*versus*

Chundee Churn Doss and Bhyrub Churn Doss, (Defendants,) Respondents.

PLAINTIFF sues on a bond for rupees 61, alleged to have been executed in the presence of witnesses by the defendant on the 12th of Bysack 1255, covenanting to repay the same in the month of of Assin following.

Chundee Churn Doss denied execution of the bond, and alleged malice on the part of the plaintiff.

Bhyrub admitted the claim, and added that the debt was incurred by him, his brother, Chundee Churn, merely adding his name as security.

The moonsiff observes that the writer of the bond and two other witnesses were brought forward to prove it, as the subscribing witnesses, but their names had, to all appearance, been subsequently written, as the ink had run through the paper, and was blotted, and covered with sand as if to conceal this difference of appearance in the writing; that, moreover, the writer of the bond was the gomashtha of plaintiff, and the two attesting witnesses, men in a low position of life, and not to be considered credible witnesses, he therefore released Chundee Churn, and decreed the amount against Bhyrub who had confessed judgment.

The plaintiff has appealed, stating that the moonsiff's reasoning does not prove that his bond was false or spurious, and that his witnesses were entitled to credit.

This claim appears to me very suspicious. The defendants are brothers, one repudiates the bond *in toto*, the other admits the justness of the demand grounded upon it. As stated by the moonsiff the names of the two attesting witnesses look very much like recent additions to the bond. They are also persons in a very low station of life, evidently connected with the mart where plaintiff is employed, and do not account for their being made witnesses to this document. Two other witnesses also depose to defendant, Chundee Churn, having made voluntary statements to them in direct contradiction of his defence, and in acknowledgment of plaintiff's claim, and expressing anxiety for its amicable adjustment. These witnesses are also employed at the mart, which plaintiff superintends, and there is no accounting for the extraordinary accuracy with which all these witnesses enter into minute details regarding the matters stated in their evidence. The moonsiff, who



examined these witnesses, considered them unworthy of credit, and I see every reason for coinciding in that opinion, and, therefore, dismiss this appeal.

THE 17TH APRIL 1851.

No. 253 of 1850.

*Appeal from a decision of Ramnarain Sundyal, Moonsiff of Nyehautty, passed on 26th of August 1850.*

Munglay Sheikh and others, (Defendants,) Appellants,

*versus*

Muddassur Khan and others, (Plaintiffs,) Respondents.

THE plaintiffs averred that the defendants contracted to build for them a mud wall for 6 rupees; that they advanced 2-8, when defendants, at the instigation of certain parties, abandoned the work, the plaintiffs therefore sued them for return of the money not worked out by them.

The defendant replied that he was only employed by plaintiff as a day laborer; that he received from plaintiff 1-8, and had completed work for which wages were due to him to the amount of 3 rupees; that to forestal his demand on plaintiff this action was brought.

The moonsiff considered it proved that plaintiff had advanced to defendant rupees 2, annas 8, and that work had been done by the latter for 1-2, he therefore gave a decree for the balance 1-6.

The defendant has appealed against this, alleging that plaintiff's witnesses were his near relatives and connections, and not trustworthy in a matter in which plaintiff's interests were concerned, he then reiterated the subject of his defence.

It appears that the moonsiff not only took the evidence of those witnesses who were produced in court by both parties, but deputed an ameen to examine the work done, and to gather information on the spot. The witnesses examined are described by the moonsiff as respectable persons, and though some are connected with plaintiff, it is not to be supposed they would, on that account, in so trifling a matter have given false evidence on oath. As I observe that plaintiff's claim was satisfactorily proved, I see no reason for interfering further, and, therefore, reject this appeal.

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THE 20TH APRIL 1851.

No. 252 of 1850.

*Appeal from a decision of Ramnarain Sundyal, Moonsiff of Nyehautty,  
passed on 24th August 1850.*

Kistomohun Roy, (Defendant,) Appellant,

*versus*

Abdool Hakeem Mundul and others, (Plaintiffs,) Respondents.

THE plaintiffs instituted this suit to set aside a summary award for arrears of rent procured against them by the defendant. They aver that they never executed the kubooleut on which the award was given, nor do they hold any land of the defendants; that the summary suit was brought against them from malicious motives.

The defendant alleged, in reply, that plaintiffs had taken a pottah from them for 41 beegahs, 9 cottahs, 5 chittacks of land on the 16th Assin 1251, at a jumma of Sicca rupees 44, 18 gs. 5 c., and executed a kubooleut jointly with the late Hossein Mundul; that they had possession, paid rent in 1252 direct to the talookdar, in 1253 to defendant, and fell in arrears in 1254, for which he sued them summarily, and procured an award in the deputy collector's court.

The moonsiff sets aside the summary decree, on the ground that plaintiffs' witnesses prove that they hold no land in defendant's ijara, and that plaintiffs' brother has prosecuted criminally defendant's brothers for an assault and procured their conviction, which accounted for the present fictitious claim having been set up, as defendants though repeatedly called upon had failed to bring forward any proof of the execution of the kubooleut, or of the accounts submitted as collateral proof of the alleged arrears.

The defendant pleads, in appeal, that he had not reasonable time allowed him to produce his proofs.

On turning to the nuthee I find that the summons was duly served on defendant's witnesses. On the 1st of August, and that on the 10th, 17th and 20th of the same month, defendant's vakeel was warned to take proper measures to enforce their attendance; but no further steps were taken, and the case was decided on the evidence before the court on the 26th of August. Under these circumstances I deem appellant's negligence to have been wilful, and see no reason to interfere with the lower court's proceedings, and dismiss this appeal.

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THE 20TH APRIL 1851.

No. 3 of 1851.

*Appeal from a decision of Mr. Thompson, Sudder Ameen, passed on 7th December 1850.*

Hurrees Chunder Singh, (Defendant,) Appellant,

*versus*

Kasseepersaud Ghose, (Plaintiff,) Respondent.

SUIT for reversal of an order passed under Act IV. of 1840, forbidding the construction of a wall on 3 cottahs, 5 chittacks of ground. Value of suit laid at rupees 513-2-10.

The sudder ameen states that this case originated in an erroneous order of the magistrate, prohibiting plaintiff's erecting a boundary wall between his own and defendant's premises, such order having been based on a report of the deputy collector of Punchawongong, recording that on measurement the lands of defendant had been found less than the proper quantity; that, after the present action had been instituted and witnesses heard on both sides, an ameen was deputed by the additional principal sudder ameen to make a local enquiry; but the report forwarded by him was unsatisfactory, and his proceedings were also complained of by one of the parties, so the sudder ameen, on the case coming on his file, proceeded to the spot, and examined such parties as were likely to give disinterested evidence on the matter in dispute. From the depositions of these parties, and from local observations made by the sudder ameen, when on the spot, that officer states that previous to the construction of the wall complained of, there was a hedge growing between the premises of the contending parties marking the boundary line; that plaintiff having erected a house on his ground wished also to construct a wall to secure its privacy; that he had taken the site of the hedge for the foundation line of this wall, and did not appear to have encroached in any degree on the ground appertaining to defendant's property, neither had the construction of the wall caused any loss or inconvenience to defendant.

The sudder ameen therefore decreed to plaintiff the right to complete its construction, but as he had commenced it without in any way consulting defendant, and thereby created the present litigation, the sudder ameen would not decree plaintiff his costs.

The defendant has instituted this appeal, alleging that the report sent in by the ameen should have been adopted, and not set aside by the sudder ameen's own investigation on the spot; that the hedge was of much less breadth than the new wall, and consequently made a considerable difference in the site occupied as a boundary line between their shares.

I do not consider the objections of the defendant have any force. The sudder ameen satisfied himself by personal observation as to

the position of the former boundary line, and that plaintiff had not in any essential degree encroached beyond it, I am of opinion that the construction of a wall between their premises is rather a benefit than otherwise to both parties, and the decision of the sudder ameen appears to me both sound and reasonable. I shall not therefore interfere with it, and this appeal is, therefore, dismissed.

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THE 20TH APRIL 1851.

No. 7 of 1851.

*Appeal from a decision of Mr. Thompson, Sudder Ameen, passed on  
7th December 1850.*

Kasseepersaud Ghose, (Plaintiff,) Appellant,

*versus*

Hurrees Chunder Singh, (Defendant,) Respondent.

THE parties and the circumstances of this case are the same as those detailed in case No. 3 of 1851, decided this day. The appellant in this case is the plaintiff, and appeals against the sudder ameen's order, refusing him his costs in his court, on the grounds that he had not consulted the defendant, or attempted to procure his consent to the construction of a boundary wall between their respective premises.

The only plea urged by the appellant is the decree given in his favor; but, taking into consideration all the circumstances of this case, I am of opinion that as plaintiff commenced the wall on the site of the old hedge, which he first cut down and destroyed, and which hedge was as much the property of defendant as himself, and that although defendant's opposition has been shown to have been groundless, yet plaintiff's own acts have brought upon himself his own share of the present litigation, and therefore I see no reason to release him from the costs incurred on his own part. I therefore confirm the order of the sudder ameen.

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THE 20TH APRIL 1851.

No. 8 of 1851.

*Appeal from a decision of Nilmoney Mitter, Moonsiff of Kuddumgatchee,  
passed on 9th December 1850.*

Joomun Mundul and others, (Defendants,) Appellants,

*versus*

Belal Singh, (Plaintiff,) Respondent.

PLAINTIFF sued the defendants for rupees 58, 13 as., 6 gs., 2 c., being principal and interest of a bond for 49 rupees, dated 4th of Assin 1255 B. S., to be paid with interest in Maugh of the same year.

The defendants denied execution of the bond or borrowing the money, and allege that the suit has been got up in consequence of their refusal to give plaintiff a nuzzur and salamee at the time of sugar manufacture.

The moonsiff observes that had the defendants' refusal of nuzzur and salamee been, as alleged by them, the real cause of this action, they would have been able to point out many acts of harassment and oppression on the part of the zemindar, and this suit would have been instituted by him, or one of his near dependants. Such facts have not, however, been alleged by the defendants, and therefore their plea seems improbable. Moreover, defendants assert that, for the reasons stated by them, disputes had been going on between them all and plaintiff, whereas their witnesses depose that plaintiff demanded salamee from the defendant Joomun only, and that with him only did any quarrel ensue on this account, and that at the time Joomun alone was present; that, on the other hand, plaintiff filed his bond, and adduced witnesses, whose testimony substantiated the truth of his claim. The moonsiff accordingly decreed to plaintiff the full amount.

The defendants, in appeal, take exception to the evidence of plaintiff's witnesses thus relied upon by the moonsiff, and request their depositions may be referred to, and it will be seen that they are far from sufficient to establish plaintiff's claim.

I observe that plaintiff brought forward four witnesses, two as subscribing witnesses of the bond, and two to prove that the defendants had come to plaintiff's house, and preferred a request that he would settle the matter amicably without going into court.

Some of these witnesses have a very slight knowledge of the defendants, and cannot describe their personal appearance, they appear to have been casually present, when the bond was written; and those who heard the defendants offer of a settlement were only accidentally visiting the plaintiff's house on business of their own. Many questions suggest themselves to test the truth of these persons' statements, but none were asked by the moonsiff, and as only the vakeels are mentioned as examining and cross-examining the witnesses, I suspect the examination was not conducted by the moonsiff in person. Under this impression I return the case to the moonsiff to re-examine the plaintiff's witnesses, and to put such questions as are calculated to test their veracity. The stamp fees to be returned.

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